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# Switzerland, Liechtenstein; Business study

Touche Ross International

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business study  
**switzerland  
liechtenstein**

*Touche Ross International*



business study

# switzerland liechtenstein

1978 edition

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*Touche Ross International*



# Preface to Second Edition

This study is one of a series of Business Studies designed for the use of Touche Ross professional staff in all countries and for interested clients. Users of the study should ascertain whether the information given here has been superseded by later developments. Specific business questions or problems may have legal and tax ramifications that are beyond the scope of this Business Study and the assistance of professional advisers is recommended. Suggestions for revisions should be sent to the Touche Ross International Executive Office.

The official currency for Switzerland and Liechtenstein is the Swiss franc, and all amounts quoted in this Business Study are in Swiss francs (SF). At the end of January 1978, the approximate Swiss franc exchange rates with other currencies were:

SF1	=	US \$	0.50
		£ Sterling	0.26
		Deutsche Marks	1.07
		French Francs	2.39
		Dutch Guilders	1.14
		Japanese Yen	121.42

Readers should check in the financial press for subsequent variations in these rates.

March 1978



# Introduction

Switzerland is important to many people, often for quite different reasons. To the international tax specialist, it is a country with moderate taxation, liberal treatment of foreign-owned enterprises, agreements with many other countries for the elimination of double taxation, and favourable treatment of special forms of enterprise. To the industrialist, it is a country for careful consideration when a European location is being planned because of its central position in Europe, its well-developed financial services and communications network, and its economic strength. To the potentate with a fortune to preserve, it may suggest thoughts of a safe, anonymous haven for his funds. And to the visitor, it is a land of unsurpassed scenic grandeur with picturesque Alpine inns and efficiently run mountain and lake resorts.

A second edition of this Business Study is required because attitudes to Switzerland have changed somewhat since the 1960s. There are several reasons for this: on one hand, many foreign corporations now prefer to base their operations within the European Common Market, and on the other, acute labour shortages, high exchange rates, shortages of office and residential accommodation, and severe permit restrictions for bringing in managerial staff from home locations have all contributed toward making the setting up of new operations in Switzerland progressively more difficult. Moreover, the recession of the mid-seventies has proved, as elsewhere, the worst in the post-war period. Nevertheless, Switzerland remains a strong and stable country that offers many advantages to the foreign investor, and although some corporations have moved out and the rate of new ones moving in has slowed, Switzerland continues to attract its share of foreign business. The country is well placed to benefit from world economic recovery, especially as customs barriers to its exports are largely being dismantled. Another advantage is that Switzerland is a favourable tax location without suffering from the disadvantages of a pure tax haven.

The tiny Principality of Liechtenstein can be conveniently described in the same Business Study as its bigger neighbour, for it is in economic union with Switzerland and shares many of its regulations and customs. Despite these links, Liechtenstein is a sovereign independent state with its own taxation and company laws, whose special features give it an importance to foreign investors quite disproportionate to its size. This Business Study is therefore in two parts: Part One deals with Switzerland and Part Two with Liechtenstein.

English is spoken comparatively widely in Swiss and Liechtenstein business circles, but translations of terms have been provided when deemed helpful. Although Switzerland has three official languages, German,

French, and Italian, translations are given only in the first two of these except at the end of Chapter 7, as comparatively few Swiss enterprises use Italian. Translations appear in italics, with the German first.

This Business Study has been written by G. K. Dykes and J. A. Newman of the Touche Ross office in London, England, with the active cooperation of G. Badan and P. Prisi of Touche Ross Geneva and Zurich, respectively, and of Dr. B. Guggi and his colleagues of the General Trust Company, Vaduz.

Linda S. Avelar  
Director of International Publications  
March 1978



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PART ONE

switzerland





- THE COUNTRY
- THE PEOPLE
- GOVERNMENT AND THE ECONOMY

## THE COUNTRY

### Location and Area

Switzerland is situated in central Europe, with no direct access to the sea. Bounded by France to the west, Austria and Liechtenstein to the east, Germany to the north, and Italy to the south, it is a crossroads for continental and intercontinental traffic. Its efficient transport system handles a sizeable amount of trade with surrounding countries, thereby earning much foreign exchange.

Switzerland covers only 41,300 square kilometres (16,000 square miles), about twice the size of the state of New Jersey in the United States, the same as the island of Kyushu in Japan, or one-third that of England. At the widest point, it is 350 kilometres (220 miles) from east to west, and 220 kilometres (137 miles) from north to south.

### Geographical Features and Regions

Although people often think of Switzerland as an entirely mountainous country, in reality it is quite varied in its relief. Its social institutions have evolved, in part, because of its distinctive topography. Switzerland is divided into three distinct geographic regions: the Jura, the Alps, and the Central Plateau or Mittelland.

The Jura Mountains cover much of the northwestern area, and this region is important because it is the home of one of the country's principal industries, watchmaking. It comprises 12% of the total area of Switzerland and contains over 13% of the population. Besides watchmaking, dairy farming and timber are important industries.

The Alpine chain stretches from France into Yugoslavia, but some of its highest peaks are in the southern part of Switzerland, including the spectacular Matterhorn (4,478 metres or 14,701 feet). Two of Europe's main rivers, the Rhine and the Rhone, begin there. The Swiss Alps, known to visitors from all over the world, cover 61% of the total area of the country, but are home to only 18% of the country's population.

The Mittelland lies between the Alps and the Jura, extending for 300 kilometres (190 miles) from Lake Geneva to Lake Constance. This un-

# Switzerland in Brief

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dulating plateau occupies little more than a quarter of the country but contains two-thirds of its population. It is highly industrialised and intensively farmed.

## Climate

In the South, the deep valleys are sheltered and enjoy comparatively mild winters, especially around the lakes on the Italian frontier; summers are pleasantly warm. In the mountains, winters are cold, with snow lasting up to six months in the East. However, the air is dry and the sunshine bright, so that many health resorts such as Arosa and Davos have been developed. Summers in the mountains are mild or warm, although the daily temperature ranges widely.

The climate of the Mittelland is fairly uniform, with more mist and much less winter sunshine than in the mountains and frequent thunderstorms in summer. In the main cities, average temperatures are 0°C (32°F) in winter and 18°C (64°F) in summer.

Rainfall is plentiful in the Jura, but is heaviest at Säntis in the East, with a record 244 centimetres (96 inches) per year.

## Natural Resources

Perhaps Switzerland's major natural resources are its mountains and lakes; these brought foreign visitors to the country long before the phrase 'tourist industry' was thought of. According to government statistics, three-quarters of the country is 'productive' if pastures and forests are included, but mountain farms are generally uneconomical and have to be subsidised as a matter of national policy. Mineral deposits are insignificant although there are small supplies of coal, iron ore, salt, molybdenum, and uranium. Hydroelectricity, an important source of energy, is fully exploited, and Switzerland is largely dependent on imported energy supplies, which now form a material proportion of its total imports bill. A nuclear power programme is some years behind schedule, partly because of opposition from many citizens determined to protect their environment. Building materials are plentiful: limestone, gypsum, asphalt, granite, gneiss, marble, slate, and clay are all produced and are the basis for important construction, cement, and glass industries.

The Swiss compensate for their lack of raw materials by producing goods that require a high degree of labour and the precise workmanship of a skilled labour force. In Europe only Sweden, which has far greater natural resources, has a higher per capita income.

# switzerland

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## Major Cities

Most of the main towns and cities lie in the **Mittelland**. The major cities (with their German or French names, if different, in *italics*) are:

		Population (1975) (000)
Zurich ( <i>Zürich</i> )	Commercial and financial centre with important engineering, chemical, and textile industries.	396
Basel ( <i>Bâle</i> )	Busy Rhine port on Franco/German frontier, with chemical and engineering industries; seat of the Bank for International Settlements.	196
Geneva ( <i>Genève/Genf</i> )	European headquarters of the United Nations and other international bodies, and home of precision instrument, watchmaking, and jewellery industries among others.	159
Bern ( <i>Berne</i> )	The federal capital and a centre for manufacture of machinery, foodstuffs, and other consumer goods.	152
Lausanne	Agricultural and winegrowing centre, with watchmaking and light engineering industries.	135

For easy reference, the English spelling will generally be used in this study.

Other towns include Winterthur (heavy engineering) — 90,000; St. Gallen (*St. Gall*) (printing and textiles) — 79,000; Lucerne (*Luzern*) (tourist centre and engineering) — 67,000; and Biel (*Bienne*) (watchmaking and engineering) — 61,000. If surrounding suburbs were to be included, the population figures for the bigger cities would be about twice as large.

## THE PEOPLE

### Population

The 1970 census recorded a population of 6.27 million, a little more than that of Massachusetts in the United States and about one-tenth of West Germany's. Population growth in the decade before 1970 was about 1.5% per year, largely due to the influx of foreign workers. This flow has now practically stopped, and the Swiss birth rate is declining; in 1975, for the first time since 1922, there was a net decrease in the population. Nevertheless, the population was estimated to have increased by the end

# Switzerland in Brief

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of 1976 to 6.35 million, of which one-sixth were foreigners. Many Swiss people are uneasy about the number of foreigners in their country, with results described in Chapter 4. Of the foreigners, half are Italian, and about one-tenth each are Spanish and West German. One-third of the people live in towns with 10,000 or more inhabitants, which indicates how the population is spread among many small communities. Population distribution is indicated in the table on page 14.

Not only is there little physical unity in Switzerland because of the mountainous terrain, but also, on the surface at least, little social unity. This is because the many small population groups differ from one another in language, religion, characteristics, and customs. Despite this, a genuine Swiss element binds these diverse features into a national character.

## Labour Force

The makeup of the working population in 1970 is shown in the following table, clearly indicating the importance of foreigners in the labour force:

	Swiss (000)	Foreigners (000)	Total (000)	%
Agriculture	221	10	231	8
Manufacturing, mining, and construction	1,007	438	1,445	48
Services	<u>1,110</u>	<u>210</u>	<u>1,320</u>	<u>44</u>
	<u>2,338</u>	<u>658</u>	<u>2,996</u>	<u>100</u>

Because of the economic crisis of the mid-seventies, which led to the repatriation of many foreign workers, by 1976 the total had decreased to 2,694,000. Of this total, agriculture employed 6%, industry 44%, and services 50%. As in many other highly developed countries, the most significant trend in recent years has been from industry into service activities. Industrial output has not dropped correspondingly, however, because labour productivity is estimated to have risen by over 50% in the last decade as a result of considerable investment in capital equipment.

## Languages

Switzerland is the most multilingual country in Europe. In addition to its three official languages — German, French, and Italian — there is a fourth national language called Romansch, an updated version of the Latin spoken 2,000 years ago by the Alpine tribesmen conquered by Rome. Including resident foreigners, about 65% of the people speak a variety of German dialects, 18% French, 12% Italian, 1% Romansch, and 4% other languages. German is spoken mainly in the northern, northeastern, and cent-

ral parts of the country, French in the west, Italian in the south, and Romansch in the isolated valleys of the southeastern canton (federated state) of Graubunden (*Grisons*). In some cantons French is spoken in one-half and German in the other, while a few areas are truly bilingual and people may start a conversation in one language and finish it in another. Biel (*Bienna*) is perhaps the most bilingual town of all. The principal language of each canton is shown in a table at the end of this chapter.

All four national languages may be used in business. The federal government conducts business in the three official languages, simultaneous translations being made in the legislatures. In business circles and the tourist industry, English is widely used as an auxiliary language.

## **Education**

Each canton is responsible for its own educational system. Educational standards are common throughout the country, although there are differences in detail, influenced by historical, cultural, and religious traditions. Schooling up to age 14 is adequate, free, and compulsory, in accordance with the constitution. After that age, primary schools give vocational training, but some children are able to move to secondary schools at age 11 which lead to higher middle schools offering classical, modern, and scientific curricula. Advanced education is available at seven cantonal universities, two technical universities, and a school of economics and public administration. In addition to public schools, there are also private ones, some run by religious organisations. Federal grants for education are made to some of the poorer cantons. All primary schools teach a second official language, and in secondary schools a third is often added. Technical and vocational courses and apprenticeships are widely available, often combined with part-time day or evening schools.

Educational standards are high, and the system has produced the skilled workers and technicians who have made Switzerland one of the richest and most highly industrialised countries in the world.

## **Religion**

Including foreign residents in Switzerland, about half the people are Roman Catholic and half are Protestant. Although liberty of conscience and belief is inviolable under the constitution, certain militant religious bodies are banned. Religious and language groupings do not coincide, and Catholics and Protestants are increasingly intermixed.

## **History**

The earliest inhabitants of the country were called the Helvetii, from whom is derived the historic name of the country, Helvetia, which appears on its



# Switzerland in Brief

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postage stamps and elsewhere. Small communities slowly grew up along the trade routes through the great Alpine passes, and in the Middle Ages these communities resolved to free themselves from the oppression of the great landowners who had emerged on the break-up of Charlemagne's empire in the ninth century. In 1291 the three 'forest cantons' or communities of Schwyz, Uri, and Unterwalden formed the Swiss Confederation. United in resistance to attack by the land-owning Habsburgs, they resolved to settle their disputes by arbitration and to accept local judges only. Lucerne soon joined the confederation and later Zurich, Bern, and other communities followed. On several occasions the Habsburgs with their Austrian armies were routed in battle by the tough Swiss mountain fighters, and by 1500 the members of the confederation were independent of all overlords, free to squabble among themselves about religion, taxes, and interference in each other's affairs.

Napoleon conquered the whole area and swept all the little states away. In 1798 he proclaimed the Helvetian Republic with a central seat of government, a unified legal system, internal free trade, and a common currency. This did not suit the Swiss, with their insistence upon the importance of local communities, at all. On Napoleon's downfall in 1815 a new confederation of 22 cantons was recognised as fully independent, and its permanent neutrality was guaranteed by the great powers of the time.

After a final intercantonal quarrel, a new constitution was adopted in 1848. Although since amended, this constitution marked the national unification of Switzerland and the birth of the federal state as it is today. Important rights, however, were still reserved by the cantons: education, ecclesiastical affairs, federal law enforcement, police, roads, and — most important to foreign businessmen — major areas of taxation.

A keystone in the evolution of the Swiss Federation has been the principle of neutrality. This principle has prevented the disparate elements of the old confederation from joining with neighbouring nation-states that have the same language, culture, and religion. Neutrality thus helped to create Switzerland's identity, and today, after successfully standing aloof in two great world wars, the Swiss people have achieved national unity while at the same time maintaining their local traditions and customs.

The country's historical development explains the importance of the cantons, which every foreigner trying to understand Switzerland and the Swiss must recognise. Because the individual cantons are mentioned frequently in this Business Study, especially in Chapter 8, a complete list is given in the table on population distribution in this chapter. In recent years the French-speaking people in the northwest of Canton Bern have pressed

strongly for the formation of a new canton, to be named Jura. This canton is likely to be formed shortly, provided that amendments to the constitutions of the Federation and Canton Bern are approved.

## **Life in Switzerland**

The country is named after one of the historic cantons, Schwyz. The Swiss are somewhat reserved on the surface and prefer a certain degree of formality; courtesy is very important to them. They are hardworking and thrifty and expect quality and value in the goods and services they purchase. They are scrupulously honest and reliable.

Military service is compulsory for all male citizens between 20 and 50. It comprises an initial training period of four months followed by eight annual 'refresher' courses of 20 days before age 32, with shorter periods thereafter at longer intervals.

Because Switzerland lies between the civilisations of Germany, Italy, and France, it is a rich repository of European culture. Its historic cities, monasteries, and castles, as well as its scenic grandeur, make it a country full of variety and interest. There are numerous cultural and sports opportunities. Television is well established, with one receiver to every four inhabitants — much the same ratio as that for automobiles.

Although neutrality is very important to the Swiss, it has not kept them aloof from international affairs. The European headquarters of the United Nations, for instance, are in Geneva (although neutral Switzerland is not a member), and several other international agencies are located there also. Many young people, however, especially in the Suisse Romande (French-speaking cantons), would like to see their country more closely involved in European integration.

Swiss humanitarians have contributed much to the world — Dunant, for example, founded the International Red Cross (whose flag is Switzerland's national flag in reverse), and Pestalozzi's world-famous children's homes have cared for countless orphaned and destitute children. Other Swiss benefactors to the world — in some people's view at any rate — were the inventors of milk chocolate and instant coffee.

Switzerland is an expensive country both to live in and to visit, although standards vary widely between the richest and the poorest cantons. The pattern of public expenditure is another reminder of the cantonal system: for example, while defence expenditure absorbs about 21% of the federal budget, it is a much smaller part of total public spending — an indication

# Switzerland in Brief

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that many budgetary matters are not federal but cantonal or local. The taxation consequences of this are described in Chapter 8.

In towns, flats (apartments) are much more usual than individual houses. A citizen normally finances the purchase of his home by borrowing 50%-60% of the cost from a savings or mortgage bank and a further amount (usually up to a total of 70%-75% of the cost) from a commercial bank on a second mortgage at a higher interest rate. The balance comes from private savings. Domestic equipment such as refrigerators or washing machines is often purchased by instalments or with a loan from a bank or finance company.

Foreigners should consider taxation, exchange control, and real estate regulations when contemplating purchasing a house. Furniture and personal belongings of foreigners who have been granted residence permits may be imported free of customs duties, although their subsequent sale is restricted in order to prevent abuses of this privilege. Some private schools cater to foreigners' children requiring education for examinations in their home countries.

## GOVERNMENT AND THE ECONOMY

Switzerland is a federal state, at present composed of 19 cantons and 6 half-cantons which are divided into some 3,000 municipalities or local government units, usually known by the French word *commune*. Government is thus decentralised, and each level is autonomous in its own sphere.

### Federal Government

The federal government has exclusive rights in the following areas: foreign affairs, national defence, customs, post and telecommunications, railways, and civil, criminal, and industrial legislation. Some aspects of social security and taxes are also reserved to the federal government. The Swiss legislature is the Federal Assembly, which consists of two chambers. One, the National Council, has 200 members directly elected every four years by proportional representation from votes of all citizens aged 20 and over. The other, the Council of State, consists of two members from each canton (one from each of the half-cantons). The Assembly is the supreme power of the federal government; its legislation may not be vetoed by the executive or amended in the courts. Majority approval in both chambers is required for any measure to be passed. The Assembly can also enact emergency decrees (*Bundesbeschlüsse - Arrêtés fédéraux*), valid for a limited period only, which amend the constitution. Such decrees must be sanctioned by referendum within a year and again on expiry of the limited

period if the government wishes to extend them. If emergency decrees amend just a particular law, they are subject to referendum only if requested by popular initiative as described later in this chapter. They are often used to direct the economy.

The Assembly elects seven councillors to a Federal Council (*Bundesrat - Conseil Fédéral*), the executive body responsible for federal government. Each councillor is the head of one of the seven departments or ministries — foreign affairs, interior, justice and police, military, finance, public economics, and post and railways. Annually, one councillor is elected federal president and another (who invariably succeeds him) is elected vice-president. President and vice-president are usually from different political parties, cantons, language and religious groups. So anxious are the Swiss to be fair to all sections of the community that it is sometimes difficult to find candidates for office who meet all these conditions. The president does not have power to dismiss his colleagues, so there can be no cabinet crises. The Council as a body cannot be dismissed by a vote of censure in the Assembly. The Council is, however, responsible to the Assembly, to which its proposals for laws and emergency decrees must be submitted. The trend is for the executive branch to increase its powers at the expense of the legislature.

This system of checks and balances is far-reaching and largely eliminates political contests and party strife. Election to the Federal Council virtually means reelection for life, barring resignation, reinforcing the continuity of the system. Each head of a federal department has the time to learn his job and perform it without fear of reprisals at the polls. However, although this administrative system fosters political stability, its critics object that it is less democratic than oligarchic — between 1848 and 1973 only 82 individuals had acted as councillors.

To counter any trend towards concentration of too much power in too few hands, the Swiss have evolved two special features, the *referendum* and the *initiative*. These are described in the paragraph on politics later in this chapter.

## **Cantonal and Local Government**

The cantons are not merely administrative districts of the federal state, but have considerable powers of their own. Foreigners must always think in terms of the canton in which they intend to do business and not just of Switzerland as a whole. Each canton has a large amount of fiscal independence. Each maintains its own police force, regulates public health and education, supervises legal procedures within its territory, plans land use, builds its own roads, appoints magistrates and civil servants, and enjoys

# Switzerland in Brief

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some leeway in the application of federal law. Each canton has its own constitution providing for a cantonal executive body and legislature, the legislature playing the principal role.

Voting in cantonal and communal elections is by all citizens of 20 or over, except in Appenzell, where the men still refuse to give the women the right to vote. Women have been allowed to vote in all other cantons and in federal elections since 1971, although in French-speaking areas they won the right to vote in cantonal elections some years earlier.

In some small cantons the medieval practice of holding open-air meetings of all voters, where votes are by show of hands, still survives. Most cantons, however, have outgrown this form of direct democracy and employ representative democratic methods. Cantons, like the federal state, have referendum and initiative procedures.

The third level of government in Switzerland is the commune (*Gemeinde* - *Commune*). Larger communes have their own legislative assemblies and executive councils under presidents; smaller ones have councils only. Communes have the right to levy local taxes and have self-rule in all matters that are not the prerogatives of any higher level: for example, maintenance of local highways, public utilities, transport, primary schools, and care of the destitute. Cantons are divided for administrative purposes into districts (*Amtsbezirke* - *Districts*) made up of groups of communes. These districts are supervised by a *Regierungstatthalter* or *Prefect* representing the cantonal government.

The Swiss continually demonstrate their desire to perpetuate decentralisation. For instance, proposals for granting wider powers to the federal government for intervention in the economy have been made on several occasions, but are invariably rejected. This is important when considering such matters as taxation, investment incentives, and general government influence in the economic field.

## **Politics, the Referendum, and the Initiative**

Eight parties are usually represented in the National Council. The chief are the Christian Democrats (conservative), Radical Democrats (liberal), and Socialists (left-wing), each with 40-50 seats, and the Democratic Centre Party, with about 20. The federal government is an almost permanent coalition, the Federal Council being composed of two members from each of the three main parties and one from the Democratic Centre Party. Policies in general tend towards conservatism because the Council of State is weighted in favour of rural and Catholic areas in that it gives equal cantonal representation. In the October 1975 elections the Socialists gained

nine seats and, while they remain part of the coalition, may have more influence on the future programme. However, the work of the Federal Assembly is often reduced to a deliberative function, because of that distinctive Swiss feature, the national referendum.

Major legislative proposals are generally submitted to referendum, and those amending the constitution always so. In addition, any 50,000 people or the legislatures of eight cantons may demand that a proposal be put to a referendum. A simple majority of citizens' votes is required to approve a referendum decision, but for constitutional amendments a majority of cantons must vote in favour also. Referendums are frequent, one reason having already been mentioned — the confirmation of emergency decrees concerning the management of the economy.

Swiss direct democracy goes even further. If sufficient voters feel strongly on any matter, they have the right to initiate amendments or additions to the constitution, even against the will of the government. This right is called the 'popular initiative.' At least 100,000 voters' signatures are required to ensure that proposals are submitted to the electorate. Proposals become law if a majority of voters and cantons approve. Together with the principle of neutrality, these concepts of direct democracy help to give Switzerland its identity and cohesion.

## **The Judiciary**

The judicial power, the Supreme Federal Court, has its seat at Lausanne. Twenty-six federal judges are elected by the Federal Assembly for six-year terms. The duty of the Court is to protect the rights of citizens against federal and cantonal authorities; it has no power to judge the constitutionality of federal laws. It is also the final court of appeal in intercantonal disputes. Otherwise, judicial matters are settled in cantonal civil and criminal courts. Court decisions are not binding on other courts. Some cantons have separate commercial and labour courts. Taxation questions are dealt with by a special department of the Supreme Federal Court, and there is also a federal insurance court.

## **Economic Trends**

Until the 1974/75 downturn, Switzerland had experienced almost uninterrupted economic growth for two decades. Expansion had largely been due to a heavy influx of foreign capital and labour, rapidly expanding export trade, high demand in the construction sector, and high individual consumption. As a result, per capita gross national product had become among the highest in Europe. In the early 1970s, however, economic activity was strongly influenced by government efforts to curb inflation, in particular by curtailing what it considered excessive investment and by labour

# Switzerland in Brief

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restrictions. Because of the 1974/75 recession, however, some temporary measures to restimulate activity were introduced, and 1976 saw a steady revival of the economy. Although Switzerland's free enterprise system is perhaps the most capitalistic in Europe, there is now a general trend away from political and economic *laissez faire*.

Manufacturing tends to be in small, highly specialised units, producing short runs of high quality goods. In 1973, after some years of expenditure on rationalisation and capital equipment, about 70% of all factories and workshops employed less than 50 operatives and only 7% employed over 200.

Principal sectors are:

## Individual Establishments

Machinery, apparatus, and instruments	1,812
Clothing and textiles	1,548
Metallurgy	1,485
Wood and paper	1,252
Watches and jewellery	1,073
Printing	839
Food, drink, and tobacco	622

Because Switzerland depends on imported raw materials as well as foods and fuel, its international trade is vital. Chief trading partners for both exports and imports are the Common Market or EEC countries, which took 45% of exports and provided 67% of imports in 1976. West Germany's share of this trade is by far the largest in each case, followed by those of France and Italy. The European Free Trade Area (EFTA) countries took 12% of exports in 1976 and provided 8% of imports; Austria was the most significant partner. The United States took 7% of exports in that year and provided about the same percentage of imports. Switzerland has been a member of EFTA since its inception in 1960, together with Austria, Iceland, Norway, Sweden, and Portugal (Finland is an associate).

The major currency revaluations since 1971 have made Swiss goods progressively more expensive in other countries, and exports have consequently declined. Swiss industry is now hoping that, as a result of greater specialisation, more capital-intensive production, and some reallocation of labour, exports will increase following the resurgence of economic activity in West Germany and the United States after the 1974/75 recession. This hope seems to have been fulfilled during 1976.

Tourism plays a major role in Switzerland's balance of payments, but the currency revaluations have drastically reduced the number of tourists from

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France, Italy, the United Kingdom, and the United States. Other major Swiss 'invisible exports' are financial services, banking, and insurance.

Significant economic statistics follow:

	1972	1973	1974	1975	1976
Gross national product					
Current prices (billion SF)	116.1	134.5	146.5	144.6	146.6
Constant (1970) prices					
(billion SF)	97.8	100.9	102.9	95.7	95.6
Real increase (decrease) (%)	5.8	3.2	2.0	(7.0)	(0.1)
Per capita — current					
prices (thousand SF)	18.4	21.2	22.9	22.8	23.3
Exports FOB (billion SF)	26.2	29.9	35.4	33.4	37.0
Imports CIF (billion SF)	32.4	36.6	42.9	34.3	36.9
Industrial production					
(1970=100)	104	110	111	98	97
Hourly wages (1970=100)	116	130	146	155	157
Consumer price index					
(1970=100)	114	124	136	145	148

## Foreign Investment

On the whole the tightness of the labour supply and the small size of the Swiss domestic market have discouraged foreign investment in Swiss industry, except for some speciality products, although the free trade agreement with EEC countries described in Chapter 3 may remove some of the disadvantages. In the past, the greatest volume of foreign direct investment has been in distribution, services, and finance. Direct investment in Switzerland by foreign enterprises has been much smaller than direct investment in other countries by Swiss firms, and some sources describe Switzerland's widespread foreign investments as its 'secret empire.'



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## THE CANTONS AT A GLANCE

Canton (German, French, or Italian names as appropriate)	Area (sq. km.)	Population (1976) (000)	Population Density (per sq. km.)	Capital City	Principal Language**	Principal Religion†	Date Admitted To Confederation	Size Order By Population
Aargau	1,405	444	316	Aarau	G	P	1803	4
Appenzell - Ausserrhoden*	243	47	194	Herisau	G	P	1513	20
Appenzell - Innerrhoden*	172	14	78	Appenzell	G	RC	1513	25
Basel - Land*	428	221	516	Liestal	G	P	1501	10
Basel - Stadt*	37	213	5,765	Basel	G	P	1501	12
Bern +	6,887	992	144	Bern	G	P	1353	2
Fribourg/Freiburg	1,670	182	109	Fribourg	FG	RC	1481	14
Genève	282	337	1,196	Genève	F	P	1815	6
Glarus	684	36	52	Glarus	G	P	1352	21
Graubünden/Grischun	7,106	165	23	Chur	GR	P	1803	16
Luzern	1,492	293	197	Luzern	G	RC	1332	7
Neuchâtel	797	165	207	Neuchâtel	F	P	1815	15
St. Gallen	2,014	386	191	St. Gallen	G	RC	1803	5
Schaffhausen	298	70	236	Schaffhausen	G	P	1501	19
Schwyz	908	93	102	Schwyz	G	RC	1291	17
Solothurn	791	224	283	Solothurn	G	RC	1481	9
Thurgau	1,013	185	182	Frauenfeld	G	P	1803	13
Ticino	2,811	265	94	Bellinzona	I	RC	1803	8
Unterwalden - Nidwalden*	275	27	97	Stans	G	RC	1291	23
Obwalden*	491	25	52	Sarnen	G	RC	1291	24
Uri	1,076	34	32	Altdorf	G	RC	1291	22
Valais/Wallis	5,226	215	41	Sion	FG	RC	1815	11
Vaud	3,219	522	162	Lausanne	F	P	1803	3
Zug	239	74	308	Zug	G	RC	1352	18
Zürich	1,729	1,119	647	Zürich	G	P	1351	1

\* Half-cantons.

+ Includes the proposed new canton, Jura.

\*\* F = French, G = German, I = Italian, R = Romansch.

† P = Protestant, RC = Roman Catholic.



- INVESTMENT INCENTIVES
- FORMALITIES AND PROCEDURES
- SOURCES OF FINANCE
- CURRENCY AND EXCHANGE CONTROLS

## **INVESTMENT INCENTIVES**

### **Advantages of Investment in Switzerland**

Although the federal government does not offer any specific incentives to attract foreign investment, there are many advantages to be obtained from locating in Switzerland. These are:

- Political and financial stability
- Excellent banking, commercial, and professional facilities
- Central location and highly developed transport services
- Relatively low tax rates and liberal tax policies favouring foreign holding company and marketing types of operations
- Multilingual work force
- Absence of government interference.

Moreover, Switzerland's strong free-market economy has provided its citizens with one of the highest levels of purchasing power per capita in the world, even though there are variations between cantons. Inflation and world economic conditions slowed consumer demand in 1974/75, but domestic consumption is expected to revive following resumed economic growth in 1976, and the Swiss market remains a dynamic one.

Switzerland is a signatory to the Convention on the Settlement of Investment Disputes, under which an international centre for arbitration and conciliation was set up as a department of the World Bank. The centre is available to help resolve differences concerning investment projects where one party is a government agency and the other a foreign national.

Information about government policy towards investors is available from the Federal Office for Industry, Trade and Labour (a division of the Federal Department of Public Economy), Bundeshaus, 3000-Bern (tel.: 61.21.11), or the Swiss Office for the Development of Trade, rue Bellefontaine 18, 1003-Lausanne (tel.: 20.32.31).

# Investment Factors

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## Problems Facing Investors

Short-term government controls are introduced periodically by the federal authorities in their attempts to manage the economy. For example, for some years there was a ban on foreign ownership of securities and real estate. This was eased in February 1974, while later in that year a licensing requirement for new banks was introduced. Monetary controls are applied from time to time as described on page 28. Prospective investors should therefore always ascertain the current regulations whenever a new project is contemplated.

The biggest problem likely to face a proposed new enterprise is the chronic shortage of labour described in Chapter 4. Also, foreign investors usually wish to bring in at least some managers or technicians from their home countries, but it is very difficult for such employees to obtain the required permits (also described in Chapter 4). Moreover, in some years both residential and commercial accommodations have been in short supply.

## Tangible Incentives

Although no federal government incentives are available, some cantons and communes offer specific long-term incentives to encourage investment, domestic and foreign. In particular, some of the agricultural cantons (currently Fribourg, Graubunden, Lucerne, Schwyz, Unterwalden, Uri, Valais, and Vaud) offer rent-free land for new factories for a limited period of years or make public land available at low prices. These cantons sometimes relax work permit restrictions if this is necessary as part of a particular incentive package. A few communes have established industrial zones in order to encourage new enterprises. Some cantons (currently Appenzell, Bern, Fribourg, Lucerne, Neuchatel, Nidwalden, Obwalden, St. Gallen, Schwyz, Ticino, Uri, Valais, and Vaud) may — but do not always — grant waivers of cantonal and communal taxes to new manufacturing concerns for five or ten years. These tax concessions are summarised in Chapter 8, where the different cantonal tax rates are illustrated. Tax rates can affect the location of a proposed new enterprise as much as the availability of labour, utilities, or transport.

In mid-1975 some temporary federal assistance programmes were announced. These included the discontinuance of depreciation restrictions for tax purposes, the removal of building controls, the institution of a federal construction programme to aid the building industry, the freeing of consumer loans and instalment credit, and the extension of export credit insurance terms to assist exporters.

## FORMALITIES AND PROCEDURES

### Rules Applicable to New Businesses

All new businesses, Swiss or foreign, must comply with certain regulations prescribed in the Code of Obligations (page 41) and elsewhere. Permits and licences to operate industrial undertakings are required, federal restrictions must be observed by certain trades and professions, and basic information concerning management and organisation must be published by all new enterprises in the Commercial Register.

**Permits and Licences.** Before any industrial plant may be constructed or extended, a cantonal government permit (*Plangenehmigung - Approbation des plans des entreprises industrielles*) must be obtained. The cantonal government must clear the proposals with the Federal Labour Inspectorate and the National Accident Insurance Agency before issuing this permit, and if necessary, the enterprise must modify the proposed plant to meet their requirements. When the plant is completed, the cantonal government will inspect it to check that it has been constructed in accordance with the permit and will thereafter issue an operating licence. Only then may manufacture begin.

**Regulated Trades.** Despite Switzerland's general laissez-faire attitude, some activities are subject to regulation, especially in times of economic stress. For example, banks must agree to cooperate with the government in credit and monetary matters, and new foreign-controlled banks may be established only if they accept this rule and further agree to comply with certain regulations on advertising and management practices. Foreign-controlled banks must obtain permission to operate from the Swiss Banking Commission. Restrictions also apply to private employment agencies, dealers in securities, casino operators, and manufacturers of armaments and explosives. As in most countries, proof of competence is required before some medical and allied professions can be practiced, and foreign qualifications are not always accepted unless reciprocal practice rights are available. Shareholders, directors, and auditors of Swiss ship-owning corporations, and also (with minor exceptions) suppliers of loan capital, must all be Swiss citizens; rules for airline operators are broadly similar.

**Register of Commerce.** Every business enterprise must file basic information in the Register of Commerce (*Handelsregister - Registre du commerce*) kept in the canton where its principal place of business is situated. The names and rules of the offices at which the registers are kept vary from canton to canton, but all are supervised by the Federal Office of the Register of Commerce, and their requirements are standard throughout the country. The Register is open to public inspection, and information filed there can be relied on for legal purposes.

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The documents to be filed in the Commercial Register vary with the type of enterprise — corporation, partnership, branch, or other — but broadly include:

1. A copy of the constitution of the enterprise, including its name, purpose, and address or registered seat.
2. The amount of authorised and paid-in share capital showing classes of shares issued and details of contributions to capital other than in cash.
3. The names of the founders or partners and the extent of their contributions, liabilities, and preferential rights, if any.
4. The names and nationalities of directors or managers.
5. The way in which official notices are to be published.
6. The names and powers of persons authorised to sign on behalf of the enterprise.

Changes in any of this information must also be filed.

Every branch of a foreign enterprise must register both in the canton where it is situated and in the canton of its Swiss head office, if this is different. The documents filed must be accompanied by a translation into one of the official Swiss languages if so requested by the Registrar. The name and nationality of the Swiss branch manager must also be filed.

Sole traders must register if they engage in banking, insurance, estate management, transport, or a few other activities, or if they act as agents or brokers. Any other sole trader need register only if his annual turnover is SF100,000 or more.

Registration fees are based on capital, at approximately 0.2%, ranging from SF250 to SF8,000. Entry in the Register protects the name of the enterprise but obliges it to comply with various rules — for example, the keeping of books and records as described in Chapter 7.

A summary of each Commercial Register entry is published automatically in the Official Commercial Gazette (*Schweizerisches Handelsamtsblatt - Feuille Officielle Suisse du Commerce*).

Rather surprisingly for a country with such a reputation for secrecy as Switzerland, a creditor able to prove his interest in a corporation can request the Register to obtain its financial statements for his examination. The registrar will give him a copy and return the original to the corporation. This procedure does not apply to other forms of business entity such as private limited companies or partnerships.

## **Status of Foreign-Owned Businesses**

Foreign-owned businesses do not have to comply with any special rules on establishment and are treated no differently in law from Swiss enterprises. Foreign ownership is not limited by law, and there are no requirements for Swiss participation in capital (except in shipping and airline corporations). Foreign companies may set up in any location and undertake any trade subject to the minor limitations already described. They may also freely hold bank deposits or own real estate, subject to limitations at present in force (described later in this chapter and in Chapter 3), and may invest in other Swiss companies' shares subject to any limitations in those companies' own regulations or bylaws.

Directors or managers of foreign-owned businesses must comply with the general rules as to directors set out in Chapter 6; briefly, a majority of directors must be Swiss resident citizens.

## **SOURCES OF FINANCE**

### **Structure of the Banking System**

Switzerland has several hundred banking institutions, large and small, with branches and offices throughout the country.

**The National Bank.** The Swiss National Bank, with headquarters split between Bern and Zurich, is 60% owned by cantonal authorities and banks and 40% by other public bodies and private investors. It is not a government agency, although a majority of its board of directors are appointed by the federal government. It has the exclusive right to issue bank notes and is charged with the maintenance of the gold backing for notes issued even though these have not been convertible into gold since 1954. While the National Bank can demand information from other Swiss banks in order to formulate monetary policy, it has no statutory power over them. Money and credit controls have to be implemented by gentlemen's agreements, supplemented sometimes by federal government emergency decrees. The banks reporting to the National Bank include the 'Big Five' commercial banks, Swiss branches of the larger foreign banks, the cantonal and local banks, and the major savings banks.

**Commercial Banks.** Three large commercial banks dominate the financial scene. They are public companies quoted on the stock exchange. They are the Union Bank of Switzerland, Swiss Bank Corporation, and Swiss Credit Bank. These three banks, along with two smaller commercial banks — Swiss Popular Bank and Leu & Company — account for an estimated one-third of total bank assets. Together they are known as the 'Big Five.'

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They provide a wide range of finance for commerce and industry. They also perform a major role in managing large investment trusts and mutual funds, and they undertake security transactions for their customers. These banks all have wide international connections.

The commercial banking sector also includes many smaller banks, some incorporated with limited liability and others family-owned partnerships. These banks maintain an important position in world finance by administering the funds of their customers and underwriting security issues in collaboration with the bigger banks. In addition, many foreign banks, including leading ones from Europe, North America, the Arab countries, Japan and other main trading nations, have established branches or representatives in Switzerland.

**Other Banks.** The 28 cantonal and 24 large local banks also hold substantial funds. These banks offer a wide range of banking services but in practice tend to concentrate on mortgage business and small trade financing in their respective areas. Cantonal banks do not undertake international business.

Another group of banks comprise the savings banks and rural loan offices, the latter usually organised as cooperatives. These are popular with the thrifty Swiss people, who generally save through banks rather than through the stock exchanges. The savings and loan banks do not generally provide finance directly to industry or commerce, but take up government and other well-secured bonds and provide personal mortgage loans secured on real property.

**Federal Bank Law.** In the late 1960s it became apparent that the Swiss banking law of 1934 needed revision. Changes were made by a federal law of 1971 which generally strengthened supervision procedures. The new law required stricter conditions for the licensing of banks, amended penalty clauses, extended the rules for accounting and audit, and applied certain requirements to commercial financing institutions. The supervisory body under this law, the Federal Banking Commission, is also responsible for overseeing the operation of investment trusts and mutual funds.

## Types of Bank Finance

Swiss banks, unlike those in some other European countries, generally provide all types of banking services. There is virtually no distinction between commercial and deposit banks, at least in the 'Big Five' and the other larger institutions, which all carry on what has been described as 'department store' banking to meet all their customers' financial requirements, including the sale of securities. One of their activities recently has

been the setting up and management of investment funds. Cantonal and savings banks, on the other hand, specialise to some degree as already indicated.

Interest rates in Switzerland are usually lower than those in other countries. In July 1977 the National Bank's discount rate for top-class bills ('Bank rate') was 11½%, and its lending rate against prime security ('Lombard rate') was 12½%.

Short-term and medium-term finance is widely available in all usual forms, subject to any government credit restrictions that may be imposed as anti-inflationary measures from time to time. Swiss borrowers usually take an overdraft rather than a fixed loan, the advantage being that interest is paid only on the overdrawn balance and not on the whole loan. Discounting of trade or accommodation bills (acceptance credits) is also available for short-term finance, but is not used as widely as in some neighbouring countries. Working capital is often financed by these forms of short-term bank credit, and the security usually required can include charges on inventories and even receivables.

Medium-term finance is normally provided by fixed loan, usually secured on real estate. The banks are permitted to hold long-term bonds or equity capital but do not do so to any great extent, largely confining their activities to the role of issuing houses, promoters, underwriters, and dealers in securities.

## **Other Sources of Finance**

The Swiss virtue of thrift is well known. Because most Swiss enterprises are comparatively small, much of the capital they require is provided by their founders. In the past, the savings of the founders, their families and friends provided adequate finance, but recently smaller firms are increasingly having to turn to outsiders for further capital. Self-financing of enterprises through the retention of profits is important. Secured bonds or debentures and even equity shares are sometimes taken up by insurance companies or private investors, as a result of placements through banks. Larger enterprises raise loan and equity capital on the stock exchanges.

Several specialised institutions now offer instalment credit, hire-purchase, leasing, and factoring services. These have only recently become widespread, the Swiss having in the past preferred more traditional forms of finance. Other specialist bodies, as well as the big banks, provide finance for exports.



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The general pattern of finance for industrial and commercial enterprises in Switzerland shows a ratio of short-term finance to equity and long-term loan capital of about 3:2.

While foreign firms can fairly easily raise short-term finance in Switzerland, they may find medium and long-term credit difficult to obtain, because domestic industries have been absorbing all the available supplies of medium and long-term funds.

## **The Stock Exchanges**

The Swiss stock exchanges are among Europe's most active markets and are sometimes referred to as European economic weather vanes. The three major exchanges in Switzerland are in Zurich, Basel, and Geneva. Of the three, Zurich is the largest, most active, and most important internationally.

The exchanges are regulated by the Federal Association of Stock Exchanges, and their members consist principally of commercial and private banks. Many foreign brokerage firms have offices close to the stock exchanges, although their deals have to be processed through exchange members. Besides members, however, many dealers and licensed agents conduct over-the-counter business and act as financial advisers. The over-the-counter market does not exist in a physical place but is made by dealers who set prices for the particular securities they are selling.

Stock market investment has its problems, however. There is a lack of information about the operations of many companies and their ownership, as Swiss businessmen are reluctant to release information. Financial statements are not as meaningful as they are in some other countries, and it is still difficult to secure data on Swiss securities. The security analysis profession is still in its infancy, and Swiss banks remain the best source for investment data because they make available to the public their studies on listed companies. Most Swiss corporations are closely held by founding families, and equities quoted on the stock exchanges are far outnumbered by bonds. Even when equities are available for public holding, a substantial percentage is often owned by foreign investors. Prices of individual shares tend to be high. All these factors would tend to restrict the market, but in addition to Swiss securities, many foreign issues are listed, and there are no restrictions on dealings in foreign shares or bonds. The shares of many foreign companies are also traded over-the-counter.

**Regulations for Listing.** The requirements for listing a security on the Zurich, Basel, and Geneva exchanges are similar. It is not difficult to get

shares listed, nor is it very expensive. The following are the requirements for listing a domestic corporation, and there are further procedures which apply to foreign securities:

1. The corporation must be eligible for a listing. This means that the total nominal value of the securities to be listed (not necessarily of the proposed issue only) must be at least SF10 million. If debentures or bonds are to be listed, share capital must be at least SF5 million. In addition, the corporation must have been established for one year and have published at least one set of financial statements and annual report, and it must agree to make future statements and reports available to the public through the bank filing the listing application. The corporation's dividends, interest, and capital must be payable free of charge in the city on whose exchange it is quoted.
2. A prospectus containing information prescribed by the Code of Obligations must be published on the occasion of each issue of securities to the public.
3. A listing application must be submitted to the chosen stock exchange, through one of its members, giving the information required by the Federal Stock Exchange Association. This includes:
  - a. Twelve copies each of the prospectus, the last published annual report, and the articles of incorporation.
  - b. The agreement of the company to issue annual reports and notices of any changes in the articles of incorporation to the Stock Exchange Association Committee.
  - c. Names of the newspapers in which the prospectus is to be published.
  - d. Whether the certificates to be issued are in provisional or final form; specimens must be submitted.
  - e. The address from which the listing fees will be collected.
4. Every issue of securities to the public exceeding SF5 million must be notified to the National Bank so that the timing of the issue may be fitted into a general plan. The bank tends to give Swiss corporations priority over foreign ones.

The trend recently has been toward the issue of registered rather than bearer shares to discourage sales to foreigners. Chemical and heavy industrial corporations already principally issue registered shares. There is no legal requirement behind this trend, but it illustrates the feeling of many Swiss citizens that foreign involvement in their country should not be allowed to grow unchecked.

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Requirements for foreign corporations' issues are similar to those for Swiss organisations, with a few notable additions. The approval of the Swiss National Bank and the Bureau for Admission of Foreign Securities to Swiss Stock Exchanges must be secured by the foreign corporation, which must in addition meet the following requirements:

1. The total nominal value of an issue of debentures or bonds must be at least SF20 million.
2. A certificate must accompany the application stating that applicable stamp duties and taxes have been paid.

The first listing in Switzerland of a foreign corporation's existing securities requires that:

1. The security must already be listed in its home country where there must be an active market for it.
2. The three largest Swiss banks must confirm that together they hold at least 250 clients' deposits of the security, with a capitalisation of over SF10 million.

**The Prospectus.** The main subjects to be dealt with in a corporation's prospectus are:

1. Name, address, registered seat, legal form and objects, and date of entry in the Commercial Register.
2. Share and loan capital and reserves. Classes of share and participating certificates (see Chapter 6), together with their dividend and voting rights and any restrictions on transfers, must all be described; for loan capital, security available and order of ranking with existing loan capital must be stated.
3. Names of directors and statutory auditors (see Chapter 6) and banks or brokers sponsoring the issue.
4. Dividends paid for the last five years (or since incorporation, if more recent), any preferential rights or dividend limitations, and where future dividends will be payable. For loan issues, interest rates, repayment dates, and payment notices must be described.
5. Details of the new issue, including its purpose, amount, and terms. Sufficient information must be given to enable investors to make a proper judgement of the issue.
6. The financial year and provisions concerning preparation of the balance sheet, depreciation, and appropriation of net profit.
7. The names of the corporation's main subsidiaries and details of their share and loan capitals.

8. A brief report on events since the last shareholders' meeting, if held more than six months before the prospectus date.

The prospectus, which must be in one of the official Swiss languages, must include a copy of the last financial statements and auditors' report and a report summarising any contingent liabilities. It must be published in at least one daily newspaper.

There are no special conditions or minimum amounts of stock to be listed on subsequent issues of securities.

## **Banking Customs and Payment Procedures**

The Swiss, with their traditions of saving, think highly of bank accounts, and most people have one. Indeed, there are said to be more savings bank books than people in Switzerland. Current (checking) accounts are less usual, however, and payments by cheque, especially between private individuals, are not common, mainly because of the existence of very efficient money transfer or 'giro' services either through banks or, more commonly, through the post office. The giro systems are widely used by all sections of the community including businesses, and as giro transfers (*Einzahlungsschein - Bulletin de versement*) are not negotiable, payments made by them are relatively secure.

Swiss banks normally allow interest at very low rates on current (checking) account credit balances but make small charges for operating these accounts. Statements of account are sent by the banks to their customers as arranged between them, but paid cheques are not returned. Banks frequently hold their customers' share certificates and collect dividends for them and often arrange for holders of bearer shares to be informed about general meetings. Bank officials act as proxies at many meetings.

The major banks have recently combined to issue 'Swiss Bankers' Travelers' Cheques' which are fully negotiable and replaceable if lost or stolen. Eurocheques (cheques drawn on banks in other European countries) may be cashed in Switzerland on presentation of the holder's cheque book and bank card.

## **Bank Secrecy**

A salient feature of the Swiss banking system is its tradition of secrecy. The principle of secrecy applies to all accounts, numbered or not. Journalists have tended to distort reality in their articles on numbered accounts — the difference between numbered and named accounts being merely that only a few bank employees know the identity of the owner of a numbered account. However, secrecy applies to all bank customers' accounts and dealings with third parties.

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The Swiss have always been strong believers in the need for privacy and freedom, not only in financial transactions but in every sphere of life. The policy of secrecy in banking was formally incorporated in the 1934 banking law, wherein secrecy and silence were defined as professional characteristics of the banking industry, and the revelation of financial information was made a criminal act.

Banking secrecy does not, however, allow bankers to refuse to divulge information when they are required to do so by law as, for example, in the course of criminal proceedings. From the international viewpoint, problems may arise because the definition of what is criminal in Switzerland may differ from that in countries with which it has reciprocal legal conventions. For instance, in the United States any form of tax evasion is a criminal offence, while in Switzerland criminal (as opposed to civil) liability arises only from actual falsification of returns. Recent agreements for reciprocal aid recognise the need to breach the banking secrecy rule in cases of offences connected with organized crime, but in general the Swiss remain adamant that confidentiality in business matters is one of the citizen's fundamental rights.

Almost anyone can open an account with a Swiss bank. If large sums of money are involved, the bank will investigate, but will turn away a customer only if convinced that he acquired his funds dishonestly.

## CURRENCY AND EXCHANGE CONTROLS

### Currency

The Swiss currency unit is the franc, whose symbol (SF or Sfr) distinguishes it from the French, Belgian, and Luxembourg francs. Each franc is divided into 100 rappen or centimes. Denominations in circulation are:

*Notes* — 10, 20, 50, 100, 500, and 1,000 francs.

*Coins* — 1, 5, 10, 20, and 50 centimes and 1, 2, and 5 francs (the two smallest coins are rarely used).

Switzerland has its economic problems, but these go largely unnoticed abroad, and for most people the Swiss franc is, and may well remain, the strongest currency in the world.

### Exchange Markets and Practices

Switzerland is one of the world's great banking centres, and its currency markets are highly developed. The large amounts of foreign capital deposited in the country cannot all be invested there because of the small size

of the economy, and so the Swiss capital market has been able to meet many of the financial demands of other countries. It is estimated that about one-third of all Swiss banking business is done with foreigners, and more than one-third of the bigger banks' assets are probably invested abroad.

One of the features responsible for the influx of foreign capital into Switzerland is the prospect of high permanent liquidity. Switzerland remains a refuge for foreign funds due to the political and monetary stability of the country, as well as to the methods and practices of the Swiss banking system. Another reason for the attractiveness of the Swiss franc in foreigners' eyes is that it is one of the few world currencies still having substantial gold backing.

The main foreign exchange centre is at Zurich, but Basel, the headquarters of the Bank for International Settlements, is also active. Rates for spot (cash) transactions and for future deliveries in all major world currencies are published daily in Zurich or can be obtained by dialing telephone number 160 from any of the main cities.

## **Swiss Exchange Controls**

**Pressure on the Franc.** The value of the Swiss franc has climbed steadily in recent years, partly due to domestic economic conditions but in greater part due to the deterioration of other currencies.

The franc has been allowed to float in the foreign exchange markets since January 1973, and since then there has been constant demand for it, mainly as a result of the inflow of political funds and petro-dollars seeking stability and security. By August 1977 the Swiss franc had appreciated by 67% over the 1971 rates for major trading currencies. In 1975 discussions took place on the possible introduction of the Swiss franc into the European joint currency float (the 'snake in tunnel') which it was hoped would improve monetary stability throughout the 'snake' bloc countries — then West Germany, France, the Benelux countries, Denmark, Norway, and Sweden. At the end of that year, however, the Swiss government decided to drop the plan for the time being.

The upward revaluation has adversely affected the tourist industry and some exports, and the government and banks have discussed the merits of introducing a two-tier exchange market whereby commercial and tourist transactions would take place at an official rate but capital transactions would be kept at the free market rate. The establishment of such a market would mean the introduction of exchange controls quite alien to Switzerland's traditions of financial freedom, and the two-tier market idea has

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been dropped. In the meantime, Swiss industry has taken advantage of the recession to rationalise extensively, and as a result exports are again becoming competitive. In 1976 the country's visible trade balance was in surplus for the first time in about 20 years.

**Discouragement of Foreign Speculation.** Instead of a two-tier exchange market, curbs on the inflow of foreign funds have been introduced. Deposits credited in Swiss francs made by nonresident nationals, or by corporate bodies whose registered offices are abroad, are designated 'foreign exchange deposits.' At present, not only do foreign exchange deposits earn no interest (except on deposits prior to October 31, 1974, and savings and similar accounts up to SF20,000), but they may be subject to commission or negative interest of 40% per year. Amounts subject to this confiscatory charge are all increases in excess of SF100,000 over balances deposited at October 31, 1974. Slightly different rules apply to deposits by foreign banks.

Other restrictions made early in 1975 were strengthened in June 1976 when limits were placed on forward sales of Swiss francs to foreigners, reporting requirements were extended, and the compulsory conversion of proceeds of foreign loans out of Swiss francs was reintroduced. These controls were mainly directed at 'hot money,' and there is normally no restriction on currency transactions with a genuine commercial purpose. Certain other controls are imposed on dealings with a few countries, notably those in Eastern Europe.

**Investments by Swiss Banks.** Quotas for Swiss franc issues of shares and bonds were introduced early in 1975. As a result, banks and finance companies must obtain the National Bank's permission to make loans to foreign individuals or foreign-owned corporations and to purchase shares in foreign-owned corporations, generally if the amount concerned is SF10 million or more.

**Freedom from Controls.** Apart from these rules, there are no currency restrictions on investment, inward or outward. Thus direct investment (that is, the purchase of manufacturing or trading facilities as opposed to stock exchange securities) is free, subject to any real estate restrictions that may be imposed from time to time as described in Chapter 3. Repatriation of capital, loan amortisation payments, dividends, interest, branch profits, salaries, licence fees, and royalties can be effected without limitation through any bank. Foreign nationals are free to buy and sell securities, subject only to restrictions in the constitutions of the companies concerned. The only controls applicable to Swiss nationals are those relating to banks or finance companies as described above. Gold, including coins, may be freely bought and sold, although certain types of gold may be im-

ported only under licence. Exports and imports (including services) may be settled in accordance with usual commercial terms, and there are no special requirements for such transactions. The only exceptions to the free transferability principle concern the countries with which Switzerland has bilateral trade agreements — East Germany, Turkey, and Egypt. Because of its freedom from controls, Switzerland has been for many years a favourite domicile for international holding and finance companies.

## **Exchange Controls of Foreign Investors' Own Countries**

A foreign investor must consider the exchange controls of his own country. Although the Swiss rules may allow currencies to be freely transferred, the exchange control authorities of the investor's own country may take a different view.





- FOREIGN TRADE
- MARKETING PRACTICES
- PATENTS, TRADEMARKS, AND COPYRIGHTS
- LAWS AFFECTING BUSINESS OPERATIONS

## **FOREIGN TRADE**

To a large extent, Switzerland's prosperity and high standard of living can be attributed directly to its active international trade, which can be summarised as the importing of raw materials and the exporting of finished products after the application of skilled Swiss labour. Swiss businessmen are widely known for their experience and reliability in international trade.

The country's great dependence on foreign markets has traditionally caused it to pursue a policy of reducing trade barriers, where trade agreements with other countries do not counter its guiding principle of neutrality. Thus Switzerland cannot become a member of the European Common Market (EEC), because this would involve much more than merely the reduction of customs duties. Instead, by joining the European Free Trade Association (EFTA) on its inception in 1960, Switzerland retained full autonomy in matters of labour mobility, economic policies, commercial laws, and political involvement, and thereby maintained its traditional neutrality. Industrial free trade was achieved within EFTA by 1966, and the EFTA and EEC countries concluded an industrial free trade agreement in 1972 to be completed after a transitional five-year period. Now, therefore, most of Switzerland's industrial trade is unimpeded by customs barriers. The Swiss also support world measures to promote freer commerce among all nations. Besides EFTA, Switzerland is a member of the Organisation for Economic Cooperation and Development (OECD) and the General Agreement on Tariffs and Trade (GATT).

The country's small size and multilingual nature make it eminently suitable as a test market, and its separate French, German, and Italian cultural groups enable market results in each language area to be assessed easily. A foreign enterprise may first become interested in Switzerland as a market for this reason. Another reason is its central location among, and good communications with, the bigger markets of neighbouring states. Having gained some experience of exporting to Switzerland, the foreign enterprise may next enter into a licencing agreement or joint venture with

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a Swiss concern, while as a final move it may establish a branch or subsidiary in Switzerland. In general, it is not necessary for a foreign enterprise to obtain any permit to trade with Switzerland.

## **Licences and Controls**

Apart from agricultural and viticultural products and military goods, imports are mostly free from controls. Quota restrictions apply to agricultural products and foodstuffs because of the Swiss policy of protecting its farmers as part of its national defence plans. These quotas, which are not published, vary from year to year, and import licences are issued to meet applications until the quotas concerned have been filled. Other imports are virtually free of quota restrictions; in the few cases where restrictions exist, the quotas are so large that trade is practically unaffected. Import licences are obtained from the Federal Department of Public Economy in Bern.

Special import permits are required for a few products, such as defence materials, foodstuffs, many textiles, and those items subject to health, quarantine, or veterinary regulations. Permits are usually issued by the appropriate government department and are valid for three months, although they can be extended twice for two-month periods. Foreign suppliers should ensure that their Swiss customers possess any required import licences or permits.

Electrical appliances and equipment must be approved by the Swiss Electrical Engineering Association, and some industrial plant and equipment must meet the safety regulations of the Swiss Accident Insurance Institute and others. Health and safety rules apply also to foodstuffs, live animals, plants, beverages, pharmaceuticals, and products containing dyes or toxic substances. Labels must not contain misleading descriptions. Import agents should be able to advise on these rules.

A few Swiss products require export licences: commodities concerned are mainly strategic goods such as munitions, explosives, and industrial scrap metal.

## **Customs Duties**

In line with Switzerland's liberal approach to trade, tariffs are mostly low, except on agricultural products, automobiles, tobacco, textiles, and paper products. Duty is charged at 5% or less on more than half of all imports, and only a very few industrial products, such as private automobiles and lorries or trucks, are subject to the higher tariff rates of 12%-15%. These percentages are only rough equivalents of the actual duties because Switzerland assesses duties on gross weights (including normal packaging which should therefore be as light as possible) and not on values as do most countries.

Lower rates apply to imports from EFTA and EEC countries subject to presentation of evidence of origin. Broadly, imports are defined as originating in an exporting country if they are:

1. Natural produce of that country or products derived therefrom.
2. Products manufactured there from materials or parts originating in third countries, if they are so transformed that the products manufactured fall into different tariff categories of the Brussels Nomenclature. This usually means that the value of the materials or parts originating in third countries must not exceed 50% (sometimes 40%) of the value, excluding refundable taxes, of the finished product. Sometimes the finished product need not be in a different tariff category, but in that case frequently the value of the parts originating in third countries must not exceed 20% of its value.

This definition of origin is subject to many qualifications, and it is usually necessary to consult customs departments or experienced shipping agents on points of detail.

Duty is not charged on the import of samples that have commercial value of SF10 or less or weigh less than 100 grammes. Other samples are liable to duty, although this may be recovered if they are re-exported within a year. Alternatively, samples may be imported against a deposit or bond by the importer or his agent, or by the use of an ATA carnet. This is an international customs clearance document allowing samples to be imported on provision of returnable deposits or guarantees in advance to an approved body (for example, a chamber of commerce) in the exporting country, instead of requiring duty payments or the provision of deposits or bonds at the customs post. Publicity material and brochures are subject to duty unless concerned with certain tourist activities.

The EFTA and EEC countries, together with the many EEC preferential trade associates, form a very large market which Swiss exports can reach duty-free or on preferential terms, while imports can come into Switzerland from all these countries on similar terms. Even though tariff rates are in general low, this can be an important factor to those outside the Swiss free trade area in any decision to set up a manufacturing unit in Switzerland.

## **Other Duties and Taxes**

All imported items are subject to a statistical tax at 3% of any Swiss customs duty. Most imports are charged with a sales tax, mainly at 8.4% on the wholesale value CIF the Swiss border or 5.6% on the delivered price if the merchandise is not for resale. Small charges are made on deliveries

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out of bonded warehouses. Switzerland does not levy export duties. Excise taxes are levied on a few products, such as cigarettes, beer, and alcohol.

## Documentation

Every invoice or accompanying document is required to show, besides the usual descriptions and marks, the ex-factory price of the merchandise, all additional costs including insurance to the Swiss frontier, net and gross weights, and the name of the country of origin. Evidence of origin for EEC or EFTA merchandise is normally provided by a document called a 'Movement Certificate,' but full certificates of origin are required for tobacco, certain wines and spirits, meats, and a few other products. Both types of certificate can be issued by a customs official, chamber of commerce, or Swiss consul. Certificates must accompany the shipping documents and must not be packed with the merchandise. All documents must be presented to the customs authorities promptly or the consignee may be charged a fine.

## Free Ports and Transit Arrangements

Switzerland maintains free zones at Basel, Geneva, Zurich, Bern, Chiasso, Brig, Lausanne, Cadenazzo, St. Gallen, and Buchs. In these zones goods may be stored free of duty for unlimited periods and may also be sorted, repacked, and examined by prospective purchasers. In addition, there are many bonded warehouses administered by customs authorities, municipalities, trade associations, or others where goods may be stored duty-free for up to two years. These facilities allow foreign exporters to maintain inventories in Switzerland at minimum cost, in order to give quick service not only in the demanding Swiss market but also in the larger markets of neighbouring countries.

## MARKETING PRACTICES

### Advertising and Promotion

Advertising is expensive in Switzerland. This is partly because advanced techniques are widely used and partly because of the nature of the Swiss market with its three main language areas, marked economic and political decentralisation, and absence of a national press. There are two types of Swiss advertising concerns, the space sellers (*Annoncen-Expedition – Agence de publicité*), who plan specific campaigns and have contracts with many publications, and the consultants (*Werbeberater – Conseil en publicité*), who do not sell space but specialise in market research and the planning of advertising and public relations campaigns. Government controls and self-policing by industry have led to high advertising standards

and to limitations on the promotion of certain products. Both the ethical rules and the nature of the market make it advisable for foreign exporters to consult one of the many Swiss or international consultants available. For instance, it is often difficult or impossible to obtain production or sales data because of the Swiss tradition of commercial secrecy, and it is useless to imagine that advertising for the German market will suit German-speaking Switzerland, because of the many differences in accent and phraseology between the versions of German spoken in the two countries.

Press advertising is by far the most widely used advertising medium. There are no truly national newspapers but many local ones, mostly with circulations under 100,000, although two German-language daily papers have circulations of about 250,000. Illustrated weeklies and family magazines are popular and tend to have higher individual circulations than the newspapers. Trade and technical publications are also important for advertising capital goods.

Television is a popular medium, but advertising rates are among the highest in Europe. Switzerland has no commercial radio, although significant audiences hear radio advertisements from West Germany, Italy, Austria, France, and Luxembourg. Posters and billboards are frequently used, and Swiss poster design and printing are of a high standard. The placing of outdoor advertising is carefully controlled and is largely restricted to urban sites. Other advertising media include direct mail campaigns, cinemas, and point-of-sale materials.

Attendance is high at the four national trade fairs regularly held in Switzerland; numerous international exhibitions and fairs are staged each year also. The most important national fairs are the Swiss Industries Fair, or MUBA, at Basel each April and the Comptoir Suisse at Lausanne each September.

## **Selling and Distribution Methods**

The Swiss are producers of quality products and therefore expect the same high quality, value, good design, and finish in the goods they buy. Swiss buyers require strict compliance with delivery dates and reliable after-sales service and often begin their relationship with a new supplier by placing only a small order. Some suppliers (notably in the United States) are unwilling to accept small orders and consequently lose bigger business which often follows.

A characteristic of the market is its diversity as well as its prosperity. Not only must different languages be catered for but different tastes recognised; for instance, what might sell well in the German north might not ap-

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peal in the Italian south. Another characteristic is the considerable decentralisation of government spending through federal, cantonal, and communal channels, and this is particularly important to suppliers of capital goods. Although Swiss and foreign firms are equally free to tender for public orders, buyers understandably give preference to Swiss industry if prices are comparable.

Correspondence, price lists, catalogues, and operating instructions should be printed in at least French or German and preferably in both. Swiss customers may not read such literature if it is in other languages and so will buy from another firm giving them what they require. Labels should be printed in both French and German, and it is wise to include Italian also. Metric measurements and European Continental sizes should be used. Price quotations should be in Swiss francs, CIF the Swiss border (preferably Basel). Trading stamps are rarely used now, following the development of discount and gift schemes. Distribution by franchising is another way of entering the market.

## Agents

The appointment of a good agent is of great importance. Not only must the agent be a good salesman, but he must also keep in touch with the buying offices in all three levels of government, provide excellent after-sales service, and know about import and customs procedures. For some products separate agents in each of the language areas may be advisable, but in most cases one agent is sufficient to cover the whole country, and it does not matter where his main office is situated. Agents usually require very full information before accepting a new client and expect cooperation in introducing new products by being granted generous advertising allowances, extended credit terms, and so on. Many of them require exclusive distribution rights. Directories of agents, manufacturers, and other businesses are available, showing their activities and addresses, so that a foreign seller can obtain much information before he makes any personal contacts with prospective agents.

The word 'agent' is used here in its widest sense. Except in the textile trade, it is unusual for agents to work for commission. Most Swiss agents are in fact importers and carry inventories for their own accounts. Many importers are also distributors, mostly of one commodity or a group of related commodities. Although such agents are completely independent, it is permissible for their foreign suppliers' names to be listed in telephone directories at the agents' addresses and numbers. Agents' discounts or commissions tend to be high — up to 45% in some cases. Larger retailers, department stores, or group buying associations often bypass agents and deal directly with suppliers. Swiss agents and direct purchasers alike

prefer to deal with manufacturers themselves, and foreign export merchants or buying agencies are seldom used.

Agreements with agents operating in Switzerland are subject to Swiss law, which gives the agent considerable protection when the agency agreement is terminated. For example, lengthy notice of termination must be given by the principal, and the agent is usually entitled to compensation if by his efforts he has substantially increased the number of his principal's customers in Switzerland. An agent may apply to the court for an embargo to be placed on goods dispatched by his principal to third parties in Switzerland while a dispute about termination is settled. Other agency rules provide that commission be payable on all sales in the agent's territory whether he is responsible for them or not. Commission is payable at six-month intervals unless otherwise agreed, and the agent is permitted to examine the books and vouchers of his principal. For these reasons, legal advice should be sought when an agency agreement is being prepared.

While it may be helpful for a foreign supplier to support the agent with some of his own experienced salesmen, or even to establish his own branch or subsidiary, these courses may be impracticable due to the severe restrictions on the entry of foreigners for employment in Switzerland described in Chapter 4.

## **Trade Credit Conditions**

Swiss firms usually expect to pay by cheque or mail transfer 30-60 days after the invoice date, and they dislike cash-against-documents terms, bills of exchange, or letters of credit. Cash discounts of 2%-3% are often given for settlement within a stated period, usually one month. Interest is payable on overdue accounts in accordance with the Code of Obligations, but is often waived.

Credit assessments of a prospective customer are available from credit enquiry offices or, with the customer's permission, from banks. General information is also available at the local Register of Commerce, and proved creditors of corporations have the right to inspect financial statements. Another surprising practice in view of the Swiss tradition of secrecy is helpful when credit is to be granted: in some cantons it is possible for any enquirer to request the tax authorities to disclose the tax paid in any period by any enterprise or individual. From this information an estimate of the payer's income can often be made. If substantial commercial credits are being considered, banks can be asked to investigate the borrowing company, and they will examine and report on financial statements, budgets, production programmes, human factors, and so on, in order to evaluate the risk.

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If a customer defaults on payment, action must be commenced at an official debt collection agency. If, however, bankruptcy proceedings have already been instituted against the customer, action must be taken instead through the office responsible for bankruptcies and dissolutions. In both cases the offices to be used are those where the defaulter is located. Lawyers or specialist debt collectors should preferably act in these cases. In general, lawyers are less involved in business contracts than in North America.

## **PATENTS, TRADEMARKS, AND COPYRIGHTS**

Switzerland, together with nearly 80 other countries, is a signatory to the International Convention for the Protection of Industrial Property, often referred to as the Paris Convention. As a result, residents of other member countries are entitled in Switzerland to the priorities this convention affords. The priority right is one year for patents and six months for trademarks. This means, for example, that if a patent is applied for in another convention country, and then in Switzerland within one year, the Swiss application will be dated as from the earlier application in the other country, even though in the meantime someone in Switzerland may have tried to establish a patent for the same invention. Patents, models, and designs registered in Switzerland are automatically valid in Liechtenstein, but trademarks are not and have to be registered separately there.

### **Patents**

Patents are registered, irrespective of the nationality of the applicant, for 18 years from the date of payment of the fee following application. The grant of a patent is not conditional on a prior examination regarding its originality, although such examinations are gradually being introduced. Applications can be either for a main patent or for an addition to an existing patent. An initial fee of SF60 is charged, with renewal fees ranging from SF30 to SF300 over the life of a patent not subject to prior novelty examination, or SF80 to SF900 for a patent which has been examined. A patent may be licensed compulsorily if it is not worked within three years. Industrial models and designs can also be protected.

Patent applications must be made to the Federal Office for Intellectual Property in Bern (Eschmannstrasse 2, 3005 Bern — tel.: 61.41.11) in one of the official languages, accompanied by detailed specifications and drawings. A nonresident must appoint a resident representative empowered to act on his behalf, and it is wise to apply through a patent agent or attorney.



An invention by an employee in the course of his employment normally belongs to his employer, who may have to pay reasonable compensation to the employee depending on the circumstances.

## **Trademarks**

The first user of a distinctive name or mark is entitled to its registration and exclusive use. If the trademark consists of the firm's own name, registration of the firm in the Commercial Register is all that is required, but in other cases application must be made to the Federal Office for Intellectual Property. Misleading designs will not be accepted. Trademarks are granted for 20 years and may be renewed; fees are small. Failure to use a mark for three consecutive years may lead to its cancellation, leaving it free for any other party to adopt. Switzerland, with 20 other countries mostly in Continental Europe, is a member of the Madrid Agreement for the International Registration of Trademarks. Marks registered under this agreement have effect in all the subscribing states.

## **Copyrights**

Copyrights give protection for the life of the originator plus 50 years, in accordance with the Universal Copyright Convention. Copyright works should show the name of the author, the date of first publication, and the letter 'C' in a circle.

## **Business Names**

On the purchase of a sole proprietor's business the new owner's name must be added or the transfer of ownership otherwise made clear. Other rules regarding business names are set out in Chapter 6.

## **LAWS AFFECTING BUSINESS OPERATIONS**

### **Monopolies and Restrictive Practices**

Swiss industry is generally considered to be among the most cartel-minded in the world. The present anticartel law, dating from 1962, does not prohibit agreements or practices restricting competition although it allows abuses to be remedied in the courts. Actions designed to exclude certain parties from competition, or to obstruct competition through unfair discrimination, or to mislead in any way can thus be challenged. Agreements are permissible if restriction of competition is justified and reasonable — for example, to restrain professional practitioners who lack necessary experience or training. A Federal Cartel Commission has power to investigate the effects of cartels so that the federal government may sue groups considered to be acting against the public interest. Retail price

# Trade and Commerce

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maintenance was largely abandoned in 1967, and as a result, the traditionally high markups achieved by Swiss retailers were cut, and the market became more competitive. Before that, prices of Swiss consumer goods were often 20% or more higher than their equivalents across the border in West Germany.

Business secrets may not be revealed at any time during an investigation or litigation. Traditionally, Swiss firms have refused to disclose much information about their affairs although, recognising that this sometimes puts them at a disadvantage internationally, they are gradually becoming more cooperative. Agreements between Swiss firms and firms in EEC countries affecting trade within the EEC must have regard to EEC legislation on fair competition, set out mainly in Article 85 of the Treaty of Rome.

## **Mergers**

There are no legal restrictions on mergers, takeovers, or joint operations either within Switzerland or between Swiss and foreign enterprises.

## **Prices and Incomes Controls**

The federal government has power to supervise prices. Some proposed price increases must be announced in advance and are conditional on government approval after investigation.

## **Insurance Practices**

The Swiss insurance industry is well-developed and provides a comprehensive range of cover. Standard contract terms are published by the major insurance companies; these contain many qualifications and must be read carefully. Generally, an insurance contract is not enforceable until both parties have signed it, although sometimes it takes effect only after payment of the premium. Contracts for at least twelve months are normally renewed automatically if not terminated by either party in writing three months or more before expiry. Contracts generally continue with the same insurance company automatically following a sale of insured property to a new owner. Either party may cancel an insurance contract after any loss for which indemnity is payable; if the insurance company cancels the contract, a proportion of the premium paid is refundable, but if the insured person cancels, the company may retain the whole year's premium.

Credit insurance is available from two different sources. Insurance companies cover commercial risks in Swiss and certain foreign markets, while the federal government provides guarantees against currency, transfer, and political risks as well as commercial risks arising from sales to central or local governments or government-owned enterprises.

## **Environmental and Health Considerations**

Having achieved material prosperity, the Swiss are now increasingly concerned about the quality of life and the preservation of their environment. Their concern goes beyond the maintenance of scenic beauty, even though this is the basis for their third largest foreign exchange earner, the important tourist industry. A 1971 referendum amended the constitution by obliging the federal government to take action on air, water, forestry, and noise problems. This was a significant switch from traditional canton-directed policies, and many regulations now control air and water pollution, landscape preservation, noise abatement, solid waste disposal, and the handling of hazardous substances and toxic chemicals. Generally, the Federal Office for the Protection of the Environment sets standards, and cantonal governments implement them. This is why the establishment of any new or altered industrial plant is subject to licence as described in the preceding chapter.

Having set themselves high standards in the environmental field, the inventive Swiss, with their tradition of producing specialised products, are busy developing waste disposal and allied industries.

## **The Code of Obligations**

This is the Swiss equivalent of the commercial code found in most Continental European countries. It is one of a series of codes designed to set out the whole of the country's laws in a systematic and comprehensive form.

The Code of Obligations (*Obligationenrecht (OR) - Code des Obligations (CO)*) was introduced in 1881 and revised in 1911 and 1936. It applies throughout the country; it deals with such commercial matters as contracts and sales, labour contracts, agencies, powers of attorney, guarantees, business names and documents, commercial bookkeeping, prospectuses, and the organisation of business entities. Bankruptcy and insolvency regulations and some labour requirements are covered by other laws, while the organisation of the entities known as foundations is dealt with by the Civil Code of 1907 because such entities are 'persons' in civil law.

The Code of Obligations is currently being amended to improve standards of financial statement presentation and to strengthen the position of auditors.

## **Information Required on Business Documents**

There are no legal requirements for specific information to be disclosed on the letters, invoices, or statements of a Swiss enterprise, except that a

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branch must show the location of its parent body as well as its own address. Rules about the name of an enterprise are given in Chapter 6.

Businesses customarily quote their bank and giro account numbers on all documents to facilitate payment of invoices.

## Real Estate

Ownership of real estate is evidenced by entries in a record known as the real estate title register (*Grundbuch - Registre Foncier*). There is one register in each district, kept under cantonal supervision. Abstracts of entries can be obtained from the Office of the Registrar (*Grundbuchamt - Office du Registre Foncier*). Evidence of mortgages or other interests of third parties in real estate varies between cantons; some show such information on the abstracts of ownership while others issue separate certificates (*Auszug über die hypothekarischen Belastungen - Extraits de gages immobiliers*). Title to real estate is transferred by a notarial deed, which must be registered in the real estate title register in accordance with the Civil Code. Long-term leases, whereby a capital sum is payable by the tenant at the outset of the lease instead of rent, are not illegal but are uncommon; a long-term rental agreement (*Baurecht - Droit de superficie*) of 20 to 100 years is more usual.

A permit must be obtained from the local commune for every new building erected, industrial or other. Except in remote mountain areas, utilities are readily available, usually operated by municipal or semipublic bodies.

Rents vary widely, but in big cities such as Geneva an office block in the suburbs could cost about SF130-150 per square metre (about 10 square feet) per year. In a city-centre prestige block, rents might be as high as SF350-400 per square metre per year. Factory buildings are often small and are not always located in urban areas.

Regulations concerning foreign ownership of real estate have changed frequently in recent years, as the government has sought first to restrain foreign investment or speculation in land and reduce inflation by cutting the volume of property construction, and later to counteract the 1974/75 recession by encouraging construction. The basic law is that of March 1961 as modified in 1973, which provides that purchases by foreign individuals or legal entities of real estate, or of shares in real estate companies, are subject to cantonal permission and federal approval. Broadly, permission will be given only if the foreign applicant can show that the site to be purchased is to be used for commerce or industry or, provided he has already resided in Switzerland for at least five years, as a residence for himself and his family. Even then permission may be refused in areas

where there are already too many foreigners. Buying real estate as an investment does not normally qualify a foreigner for a permit, unless the project aids in developing tourism or provides housing for low-income groups. Projects of this last type may even attract cantonal subsidies; while rental income is low, the attraction to the foreigner is the preservation of his capital.

The federal government is expected to tighten the rules on purchases of real estate through Swiss-domiciled companies to prevent possible abuses of the current regulations.

## **Authorised Signatories**

The proprietors or directors of a business may delegate powers to two grades of authorised employees. The first grade, known as *Handlungsbevollmächtigten* - *Mandataires*, has powers limited to internal transactions only, and because they do not represent the business in dealings with third parties, their names do not have to be recorded in the Commercial Register.

The second and more senior grade may be given more general powers to deal with third parties, subject to the constitution of the enterprise. Employees in this grade are known as holders of procuration (*Prokuristen* - *Fondés de pouvoir*). Their names and the extent of their authority must be recorded in the Commercial Register, and they sign documents in the name of the business with an addition referring to the procuration appointment.



- THE LABOUR FORCE
- POSITION OF FOREIGN NATIONALS
- TERMS AND CONDITIONS OF EMPLOYMENT
- FRINGE BENEFITS AND SOCIAL SECURITY
- LABOUR-MANAGEMENT RELATIONS

If good industrial relations are one side of the Swiss labour coin, labour shortages are the other. Only with the 1974/75 economic recession was unemployment noticeable in Switzerland, and it is against the background of a normally tight labour supply that periodic pressures to reduce the size of the foreign labour force must be seen.

### THE LABOUR FORCE

#### Availability

In the long term, labour is likely to remain in acutely short supply, especially in the professional and skilled sectors.

Switzerland's working population is approximately three million, including nearly one million women. The distribution of this work force is indicated in Chapter 1. Before the 1974/75 recession, unemployment was virtually unknown — in 1973, an average of 81 Swiss citizens were out of work compared with several thousand vacancies. Even in the summer of 1977 there were only 8,000 registered unemployed, a much lower proportion than in other European countries, although, in addition, some employees were working short hours.

During the 1950s and early 1960s when manpower was at a premium, many thousands of foreign workers were brought into Switzerland to help meet the labour demand. This gradually generated fears of what was termed 'overalienisation,' and from 1965 on, measures were taken to reduce the size of the foreign labour force. At the 1970 census, foreign workers still provided between one-fifth and one-quarter of the total work force, a higher proportion than in any other country except Luxembourg. These workers came mainly from Italy but also from Spain, West Germany, and southeast Europe. In 1975 the federal government decided to limit the number of foreign workers to around 550,000 (excluding those who had lived in Switzerland for five years or more) by reducing annual work permit issues to an absolute minimum each year and allowing only 145,000 seasonal workers to come into the country. Foreigners are generally found in less skilled jobs, but the term 'foreign workers' also includes the top managerial and technical staff of foreign companies that have set up international operations in Switzerland.

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In the 1974/75 slowdown, the 'guest workers' were the first to be laid off, and the government took advantage of economic conditions to bring about a big reduction in the foreign work force. This curtailment of foreign labour resulted from the political and economic problems created by the large number of immigrants who had not been fully assimilated into Swiss life. Cultural, religious, economic, and social problems had been raised because many foreign workers, the majority of whom were less educated and skilled than the native Swiss, wished to become permanent residents and citizens. Arguments regarding the adverse social consequences of foreign penetration of the Swiss way of life were frequently put forward as justification for measures restraining immigration. Several 'popular initiatives' aimed at drastic reductions in the foreign work force (notably the 'Schwarzenbach Initiative' of 1970 which sought to limit the foreign population to 10% in all cantons), but these were usually opposed by industry and commerce and by the federal government, because of the serious labour shortage that would follow, especially in sectors such as the tourist industry that were highly dependent on foreign labour. By 1976, many foreign workers had returned home, and the political and social problems were less acute. As many Swiss firms had taken advantage of the recession to modernise their plants, the expansion which began thereafter did not lead to excessive demands for labour as in the past, reducing thereby the opportunities for foreign workers although stabilizing labour costs.

Work permits for foreigners are now issued or renewed only if no Swiss citizens are willing or able to take the jobs offered. Therefore, while any unemployment persists, permits for foreigners are available only in quite exceptional cases. A minor concession is that foreign workers living near the Swiss border may continue to enter without restriction.

With no large reserve of married women who might enter employment, a limit on the number of foreigners who may be allowed in, and a virtually static birth rate, the shortage of labour in times of full industrial activity is a significant and probably continuing factor in slowing the growth of the Swiss economy. In particular, there are still serious shortages of technicians and professional staff, office and hotel workers, and construction labour.

## **Recruitment**

When seeking employees, a Swiss employer may approach a cantonal or communal labour exchange or a private agency, or may advertise. Newspapers carry 'situations vacant' advertisements, but because circulations tend to be local and not nationwide, such advertisements need to be placed in several papers. Despite this, newspaper advertisements are the most usual method of recruitment for all grades of staff.

Some private agencies are run by professional organisations and others purely as commercial enterprises. Only Swiss citizens may operate such agencies, which must be licensed and must deposit guarantees to cover possible claims.

## POSITION OF FOREIGN NATIONALS

It is very difficult, because of the attitudes toward foreign workers in Switzerland, for any foreigner to take up paid employment there. This is true whether the foreigner is a junior office employee or a factory worker or a top executive designated by a multinational corporation to run its Swiss branch or subsidiary. While the problem may not be too difficult for foreign firms planning to merge with existing Swiss firms or participate in joint ventures or licensing agreements, the situation can be acute for foreign firms proposing to set up completely new enterprises.

Criticisms of the present state of affairs come from foreign workers as well as from the Swiss side. A foreigner who is lucky enough to get a permit may have to wait a long time before his family can join him, and many foreigners in unskilled jobs, especially seasonal workers, often have to put up with poor accommodations. The rationing of immigrant labour has tended to tarnish Switzerland's image as a liberal country open to the world and until recently has tended to add to inflationary pressures. Despite this, there is no sign of any liberalisation of present restrictive policies.

## Documents and Procedures

Visitors not engaged in paid employment in Switzerland and staying not more than three months need only evidence of identity (valid passport or national identity card) to enter the country. If staying in Switzerland for more than one week, a visitor must notify the cantonal aliens police department (*kantonale Fremdenpolizei* - *police des étrangers*). After three months, the visitor must apply to the communal authorities for a permit for prolongation of stay for a further three months, but there is normally no difficulty in obtaining such a permit. These rules cover most business visits by foreigners — for example, salesmen, directors of Swiss firms, prospective investors, or professional men.

Before any foreigner can be employed in Switzerland, he must hold a work permit (*Arbeitsbewilligung* - *permis de travail*). The prospective employer must apply for this permit, normally to the Federal Office for Industry, Trade and Labour in Bern, but in the case of seasonal workers, to the equivalent cantonal office. After considering the application in the light of



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economic conditions, the labour office will inform the appropriate cantonal aliens police department, which is the permit-issuing office. If and when the work permit is issued — and, as noted previously, it is issued only in exceptional circumstances to those with special qualifications or skills — the applicant's prospective employer may request permission for him to reside in Switzerland. A residence permit (*Aufenthaltsbewilligung* - *permis de séjour*) valid for one year but renewable will be granted automatically if a work permit has been issued, but will not necessarily cover the applicant's family. A permit for permanent residence (*Niederlassungsbewilligung* - *permis d'établissement*) is granted only after a long stay in the country, normally defined as five years for nationals of the Benelux countries, France, Scandinavia, and the United Kingdom, and ten years for others. Refugees and workers married to Swiss nationals are usually treated more favourably. When a permanent residence permit is granted, the foreign worker no longer counts toward quota or other limitations on foreigners.

On entering Switzerland, the worker must produce an additional document, called an assurance of a residence permit (*Zusicherung der Aufenthaltsbewilligung* - *Assurance d'autorisation de séjour*), that has been obtained for him by his prospective employer. For nationals of countries that do not have agreements with Switzerland for the abolition of visas when taking up employment, a visa must first be obtained by the worker himself on presentation of his work permit at a Swiss Embassy or Consulate. The worker will be medically examined at the frontier or airport. Like the work permit, the residence permit usually applies only in the canton of issue. Before granting either work or residence permits, the Swiss authorities have the right to require evidence of means of support. The aliens police department must be informed of any change of a foreigner's address; this applies both to visitors and to holders of residence permits.

A foreign resident may apply for Swiss citizenship, normally after twelve years' residence, three of which must have been within the last five years; any year when the applicant's family is with him in Switzerland counts double for this purpose. Prospective citizens must pass a language test, and besides federal and cantonal approval, communal agreement is required, as citizenship in the local community is considered by the Swiss to be of prime importance.

A salesman needs another document called an industrial legitimization card (*Ausweiskarte für Kleinreisende* - *carte de légitimation pour voyageurs de commerce*). If a salesman does not have a Swiss residence, he must have an accommodation address in the country. He must register at the Commercial Register and can then obtain his legitimization card from the Federal Office for Industry, Trade and Labour. Sometimes this document can be issued by a chamber of commerce or equivalent body in the salesman's home country.

## **Labour Law and Social Security**

In practice, Swiss labour and social security rules apply to all foreigners employed in the country, even though equality of treatment is only formally agreed to in treaties with Italy and Spain. Border workers are not covered by unemployment insurance, although for other foreigners practice varies between cantons.

Switzerland has reciprocal arrangements with some countries whereby contributions remain payable in the foreigner's home country for a limited period rather than in the country where he is working, while some sickness benefits and pensions (but not necessarily medical expenses) can be claimed in the latter. Foreigners and their employers will wish to ensure not only that long-term benefits from their home countries, such as pensions, unemployment and disability pay, are preserved, but also that hospitalisation and medical treatment are adequately covered.

## **TERMS AND CONDITIONS OF EMPLOYMENT**

Standards for hours, overtime, holidays and vacations, and related matters, in all firms with six or more workers, are defined in a 1964 federal law on employment in industry, handicrafts, and trade. Variations from the standards may be approved by the Federal Office for Industry, Trade and Labour in exceptional cases, to meet emergencies. Cantonal regulations also deal with working conditions and holidays. Collective agreements may depart from the standards if they improve on the statutory minimums.

### **Wage Rates**

As a result of past labour shortages, Swiss employees are among the most highly paid workers in Europe. In late 1977 skilled labour received approximately SF14 an hour and unskilled and semiskilled labour approximately SF12 an hour. Technicians such as draftsmen or laboratory staff earn SF2,700-3,300 per month.

These rates are only part of an employer's costs, for he must also take into account the social security and other payroll-related expenses described later. Wage rates vary from canton to canton, and women are paid at lower rates than men. In the larger cities, differences between rates for men and women tend to narrow, and a recent court case, when unequal pay for equal work by schoolteachers in government employment was held to be unconstitutional, may have repercussions in commerce and industry also.

Wages are generally set by collective bargaining agreements since there is no national minimum wage. Agreements may be made by individual

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employers or by employers' associations, but on the workers' side a union must always be a party to the agreement. Other employers and nonunionised workers may join in an agreement if the principal parties to it approve, if necessary paying a reasonable 'solidarity contribution' to the principals toward the costs for the privilege of doing so.

Representative monthly salaries, before bonuses, for office staff in the main cities in late 1977 were:

Bookkeeper	SF2,500 - 3,500
Typist	SF1,800 - 2,200
Private secretary (bilingual)	SF2,800 - 3,200

Manual workers are normally paid in cash and office and managerial staff by bank transfer. Wages and salaries are calculated and paid monthly, but manual workers are usually given an estimated payment on account half-way through the month. Manual and factory workers are often referred to as 'workers' and other staff as 'employees,' although these terms have no legal significance.

**Bonus Practices.** Office and senior staff usually receive an annual bonus or '13th month's' salary. Some even receive a '14th month' in the summer as well. Manual workers do not usually receive production, seniority, or other bonuses; if such bonuses are payable, they are defined in the relevant collective agreements.

**Overtime.** The federal law on employment also regulates overtime payments. The normal compensation rate is a premium of at least 25% over the basic hourly rate, but for work performed on Sundays and holidays the premium is 50% above the basic hourly rate. For overtime during the night, the premium is a minimum of 25%. But overtime work up to 60 hours per year is not always paid at a premium; practice depends on the length of the working week set out in the worker's contract of employment and on the existence of a collective agreement between employers and employees.

**Paid Leave.** Legal holidays, fixed by cantonal law, are described in Chapter 5. Eight public holidays are normally given, but in some places other days are allowed, and many contracts call for further days' leave. If a holiday falls on a weekend, it is general practice for an extra day to be granted.

Minimum annual paid vacations vary from canton to canton but may not be less than two weeks; for employees under 20 years of age, the

minimum is three weeks. An employee's vacation or vacation pay may be reduced by one-twelfth for any month when he was absent without good reason. Leave must be given for compulsory military training periods, and most employers continue to pay their employees during these periods. Other paid leave is granted for public duties such as jury service. Employers must also pay their employees during absence for sickness or pregnancy; after one year's service, pay for at least three weeks is generally required and thereafter for reasonable periods depending on length of service and circumstances, although none of these terms is defined by law.

## **Working Hours**

A standard work week of 46 hours, prescribed by federal law, applies with certain exceptions to all industrial, office, and retail employees. In many instances, actual working time has been reduced by collective agreements to as low as 40 hours. A five-day week is now general.

Hours in excess of the standard are strictly controlled. Only in an emergency may an employer demand that his employees work longer than the agreed standard, and even then only up to two hours a day for at most 60 hours a year. Government permission is required for any excess and also for any Sunday or night work. Night work, defined as 20.00-05.00 in summer and 20.00-06.00 in winter, must not exceed nine hours. Women may work at nights or on Sundays only in special circumstances, but juveniles 15-20 years of age may never work then. No one under age 15 may be employed.

## **Contracts of Employment**

As soon as any person, Swiss or foreign, is employed, his relations with his employer are governed by an employment contract. This contract need not be in writing, and the great majority of contracts with wage-earners are oral, since individual employees are usually covered by the terms of a collective agreement. Sometimes, however, a summary of the terms in such an agreement is presented to the new employee in a brief written statement, and this is now recommended practice. Salaried staff, however, are usually given contracts in the form of engagement letters. A contract must be in writing if it is with an apprentice or a commercial agent or if it contains unusual conditions. Clauses prohibiting competition may be included in a contract.

Besides defining working hours, an employment contract must set out the employee's tasks and responsibilities and the employer's duties. An employee is responsible for any damage he causes his employer, either

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intentionally or through negligence. Trial periods of one month are allowed by law, but by agreement these may be extended up to three months.

Contracts are deemed to be suspended during military service, illness, or childbirth as described in the next section.

## Termination of Employment

Termination rules apply to manual workers and salaried staff alike. They require that either notice be given or an indemnity paid. The Code of Obligations lays down standards of notice that must be given by an employer, effective from the end of the month in which it is given:

Length of Employee's Service	Period of Notice
Less than one year	One month
One to nine years	Two months
Over nine years	Three months

By mutual agreement, these periods may be varied but may never be less than one month. Notice may not be given to any employee during:

1. Periods of military service or in the four weeks before or after such service.
2. The first four weeks of illness or accident (or, after two years' service, the first eight weeks).
3. The eight weeks before and after childbirth.
4. The first four weeks of any service abroad performed at the request of the federal authorities.

Employees wishing to leave their employers must give the same amount of notice; following the expiration of a contract for ten or more years, an employee must give six months' notice. During a trial period, only one week's notice is required from either side.

In normal times dismissals are rare because of the difficulty in recruiting new staff. Because of the economic downturn in 1974/75, more dismissals became necessary, and employers must now notify their cantonal labour offices in advance of any proposed dismissals of more than 15 workers, in order that the labour offices may attempt to find them other work. Summary dismissal is allowed if it is justified.

## Other Rules

The 1964 federal employment law together with implementing rules published in January 1966 set standards for hygiene, ventilation, space, and

safety practices, provided for government inspection of factories, and introduced special rules for other enterprises such as hotels.

Every factory or workshop must publish 'works rules' containing regulations on matters such as accident prevention, cleanliness, and labour-management relations. These rules must be in the language normally spoken where the factory is situated, and they must have been approved by the cantonal government.

Workers' rights to compensation for dismissal on redundancy or to minimum wages during temporary plant closure depend on the terms of collective agreements or on the goodwill of employers.

## **FRINGE BENEFITS AND SOCIAL SECURITY**

Employees and employers both contribute to the cost of various social insurance schemes. In addition, employers often provide other benefits, and the combined cost of social insurance and fringe benefits may add 25%-30% to an employer's basic payroll costs. By the standards of most European countries, this addition is low, but it follows from the Swiss tradition of individual freedom and responsibility whereby rates of pay or compensation are high, enabling the recipient to make his own arrangements for welfare and security rather than relying on state-run schemes.

### **Fringe Benefits**

Paid leave entitlements, either established by law or agreed upon through collective bargaining, have already been described. Other fringe benefits, being voluntary, vary from employer to employer, although once adopted by any significant employer they tend to become widespread because of their recruitment value in a tight labour market.

Many employers provide additional benefits for their workers, including medical benefits, group insurance rates, and recreational facilities. Private pension schemes cover almost all employees, often provided through collective insurance policies. For older employees, employers sometimes bear all the costs. Canteens and subsidised meals are often supplied for office and factory workers. Managers often have the use of company cars, and senior managers sometimes participate in profits. Share option schemes are rare, and such benefits as free transport to and from work or low-cost housing are not usually given.

### **Social Security**

The Swiss dislike the term 'welfare state' used in other Western European countries and prefer the term 'social state.' They feel that social needs

# Labour Conditions

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should not be met by an anonymous and impersonal state, but that each individual should be enabled to meet his own needs, even if his efforts sometimes require being supplemented by outside help. Thus in the sphere of old age pensions, the state pension scheme provides a bare minimum as a supplement to private pension funds that are expected to enable pensioners to maintain their basic standards of living. Any extra needs are to be provided from individuals' own savings — encouraged by the government and often referred to as the 'third pillar' of the scheme for old age support.

Social insurance schemes (plans) have developed gradually and are still not comprehensive. They are administered partly by federal or cantonal governments and partly by private bodies under government supervision.

**Benefits.** Old age and dependants' insurance is available to all, including the self-employed. Voluntary coverage is available to Swiss citizens abroad. Foreign workers are covered by the scheme (apart from employees of international bodies, temporary residents, and diplomats) unless they already contribute to equivalent schemes in their home countries.

Pensions commence at age 65 for men and 62 for women, and widows and orphans are entitled to dependants' benefits. As already explained, these pensions are comparatively small and are expected to be supplemented by private pension schemes. Every member of the federal pension scheme is also covered for disability insurance which, besides providing disability pay, includes medical treatment and retraining for alternative work. The current maximum salary for pension scheme benefit purposes is SF36,000.

There is no federal sickness insurance scheme. Sickness insurance is provided by private schemes with government subsidies or by public schemes. Private schemes are divided into professional, centralised (covering the whole country), and local schemes. Insurance may be individual or collective (that is, the employer may take out group insurance). Recent statistics illustrate the importance of the various schemes as follows:

	Number of Schemes	Number of Members* (000)
Professional	203	489
Centralised	8	3,506
Other	302	2,074
Public	<u>194</u>	<u>561</u>
	<u>707</u>	<u>6,630</u>

\* Includes some foreign workers and members of more than one scheme.

Some public schemes cater only for lower-paid employees or old people. Less than half of all members are entitled to guaranteed income during periods of ill health, but about 94% of the resident population is covered for medical and hospital costs. Contributions to medical or hospital bills vary, but most funds provide 75%-90% of medical treatment and related expenses, and those that give income benefits provide 60%-80% of normal gross pay following the periods of paid leave already described.

Accident insurance is organised either privately or through a federal fund, and provides medical treatment and disability pensions. Foreign workers are usually covered, and it is proposed to extend the federal scheme to cover apprentices, part-timers, the self-employed, and other small groups not insured at present.

Compensation for military service, described in Chapter 1, is paid from a special fund at up to 90% of latest earnings. Rates vary from SF7 to SF75 per day, depending on seniority and family commitments. Employers usually continue to pay their employees during military service (except during the initial period) and claim reimbursement of the standard rates from the compensation fund.

As a result of the 1974/75 economic crisis, unemployment insurance arrangements have been radically amended. A new transitional federal scheme came into force on April 1, 1977, and further legislation is expected in about 1980. The main characteristics of the new scheme are:

1. It is compulsory for all employees, manual and other.
2. Contributions are made equally by employers and employees at 0.4% each on earnings up to a maximum of SF3,900 per month.
3. The employee must have been employed for at least 150 days in the preceding 365 and have been a member of the new scheme for six months.
4. Unemployment benefit is payable for a period between 90 and 180 days in any year as determined by the Federal Council; at present the period is 150 days.
5. Benefit is payable at 65%-85% of insured pay, depending on family circumstances. The maximum insured pay from April 1, 1977, is SF150 per day or SF3,900 per month.

Family allowances are provided by various schemes, whereby monthly grants (increasing with the age of the child concerned) are paid by employers together with wages and salaries.



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**Costs.** These vary between cantons. In 1976, social insurance costs as percentages of wages and salaries in the cantons where most industrial and commercial firms are situated were about 10%-13% for employers and about 8%-10% for employees, as follows:

	Payable by Employer %	Payable by Employee %
Old age and dependants	4.2	4.2
Disability	0.5	0.5
Sickness and medical costs (varies between schemes)	2.0	2.5
Accident (varies between industries)	3.6	1.2
Military service	0.3	0.3
Unemployment (e.g., equivalent to new federal scheme)	0.4	0.4
Family allowances (varies between schemes)	2.0	—
Contribution to overhead costs	0.2	—

Self-employed persons or employees of nonresident employers pay a reduced rate (7.3%) of old age and dependants' insurance. The accident and sickness rates quoted above refer to a civil engineering construction corporation; for other industries the rates may be lower.

Employees' contributions are deducted from their pay and, together with employers' contributions, are paid monthly or quarterly, the requirements varying between schemes. Benefits such as family allowances or military service compensation paid to employees may be offset by employers from their contributions to the social insurance organisations. No contributions are due for employees aged under 18.

## LABOUR-MANAGEMENT RELATIONS

In 1937, an agreement on industrial peace was negotiated between workers' and employers' associations in the metals industry, and this has been extended every five years. The cooperative spirit arising from that agreement permeated the entire economy and set a national pattern, with the result that Switzerland has consistently been near the top of the list of European countries with the fewest labour disputes for many years. Disputes are normally settled across the table, through the offices of cantonal mediation bodies. The last major strike was about 40 years ago, and the Swiss were very upset when, in 1971, some wildcat strikes in Geneva threatened to impair the national record. In 1975 and 1976, however, due to the economic recession, some strikes again marred the record.

## Unions

Labour unions are organised nationally and not by canton. Although the formation of unions is not guaranteed in the constitution, they are fully recognised by various laws enacted by the federal assembly.

Swiss citizens have the right to join a union or not, and only about one-fourth of the work force belongs. Membership has tended to decline as workers have moved from industry into the trade and services sectors where there are fewer and less strong unions, although it increased again sharply in 1975 due to the recession. The unions are grouped into four main associations and are active and strong. They are responsible on the workers' side for all collective bargaining agreements.

If a union organised a strike which violated a general principle of law, anyone who suffered damage might bring a civil action against it. As long ago as 1928, a strike organised to prevent a nonunion member from getting a job was thus held illegal, and the union concerned had to pay compensation. Further, if collective agreements are ignored by either employers or workers, the other side may take action in the courts.

## Employers' Associations

Like the unions, these bodies are usually parties to the collective agreements that are so important in Swiss labour relations. The national association is called the *Zentralverband Schweizerischer Arbeitgeberorganisationen* – *Union des Associations Patronales Suisse*. All commercial and industrial employers also belong to their local chambers of commerce. The national body, the Swiss Union of Commerce and Industry, or *Schweizerischer Handels-und Industrie-Verein* – *Union Suisse du Commerce et de l'Industrie*, is a powerful body often able to assist new enterprises. It represents 17 chambers of commerce and more than 100 employers' associations. It is commonly called 'Vorort,' the name of its committee.

## Labour Courts

Disputes about employment or compensation matters may be referred to the special labour courts (*Arbeitsgerichte* - *tribunaux des prud'hommes*) that exist in many cantons. These deal with individuals and their employment contracts. Separate branches of these courts (*Schiedsgerichte* - *tribunaux arbitraux*) deal with disputes arising from collective agreements.

## Employee Participation in Management

Swiss law contains no requirements for workers' involvement in management, either through board representation or through works councils or

# Labour Conditions

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other employee committees. A referendum in March 1976 rejected proposals for works councils and worker participation in management, although less ambitious plans may be introduced at some future date.



## CHAPTER V

# Business Practices and Information

- INFORMATION FOR VISITORS
- BUSINESS HOURS
- BUSINESS PRACTICES

### INFORMATION FOR VISITORS

#### Best Travel Months

Business travel to Switzerland is practicable year-round as there are no extremes of climate. And while the most popular holiday or vacation times are July and August, Easter and Christmas, this does not prove disruptive to business life.

In general, except for occasionally Geneva and Zurich, hotel accommodation is not difficult to find in the industrial and commercial centres, for these are not the areas where tourists put hotel space at a premium in both summer and winter. It is advisable, however, to avoid making a business trip to Switzerland during the two weeks before and after Christmas. It is also well to avoid visits during the weeks in spring when many businessmen attend the large European trade fairs such as those in Milan and Hanover. Swiss businessmen may also be away from their offices because of military service, and this is another reason why travel programmes should be agreed upon well in advance.

#### Entry Requirements and Currency Restrictions

All travellers to Switzerland need valid passports or, in a few cases, national identity cards. These are the only documents required for visits of up to three months. A Swiss visa is not required by tourists, business visitors, or students. For long-term stays there are stringent entry requirements as described in Chapter 4. Normally, vaccination certificates are not needed to enter Switzerland. There is no limit on the amount of foreign bank notes that may be taken into or out of the country. There are no tax clearance formalities for visiting businessmen leaving the country. Visitors may freely export goods purchased in Switzerland, except that anyone taking out more than five watches may have to submit them for examination to ensure that they meet minimum technical standards.

As travel regulations may change at short notice, prospective visitors should check these points with the Swiss Embassy or Consulate or with a reputable travel agent. Moreover, as medical attention in Switzerland is expensive, it is wise to take out adequate sickness or accident insurance before a trip. Visitors meet no difficulties in exchanging currencies; notes and travellers' cheques can be cashed at banks, airports, and frontier

# Business Practices and Information

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posts as well as at stores and hotels. Several international credit cards are accepted at most hotels, restaurants, and shops; they can also often be used at airline offices, and this is helpful to visiting businessmen making travel arrangements on short notice.

## Transport and Communications

Despite the mountainous nature of their country, the Swiss have built an outstanding transport system to handle both internal and international traffic.

The rail network, largely federal owned, is famous not only for its speed, punctuality, and efficiency but for the feats of civil engineering which created it. Most major cities are within two or three hours' travel, and the principal trains have adequate catering facilities. Seats on intercity expresses cannot be reserved in advance, however, and on weekends and during holiday and vacation periods trains tend to be crowded. Concessionary fares are often available.

Switzerland has a comprehensive system of major and secondary roads. Its mountain roads are among the finest in the world, and there is a network of autobahns. On these the maximum speed is 130 kph (80 mph), while on other main roads it is 100 kph (62 mph). Despite the superb engineering of the mountain roads, drivers should always enquire about road conditions before crossing an Alpine pass. A foreign visitor driving his own car or hiring one in Switzerland should have with him his national driving licence or an international licence, an international insurance certificate or 'green card,' and (for his own car) his home country registration documents.

In the main towns there are adequate bus or tram services, and taxis are generally available, although they are expensive. Taxi fares to and from the Zurich airport are usually fixed and are not charged by meter.

The major airports are those at Zurich (Kloten), Geneva (Cointrin), Bern, and Basel (the last actually at Mulhouse in France). Commercial air traffic has trebled in the last decade, with the partly state-owned national line, Swissair, now handling over half the total traffic. Swissair and other major lines link Switzerland with all world centres. Internally, except for the journey from Geneva to Zurich, passengers generally use rail or road as no time is saved by air travel. In vacation periods when advance booking is heavy, return reservations should be made at the same time the flight is booked.

Although Switzerland is landlocked, inexpensive inland water transport is available on the Rhine River to and from Basel. This city is the fourth

largest Rhine port and has direct water connections to Strasbourg, Mainz, the Ruhr, Rotterdam, and Antwerp. The 'Swiss Navy' is not a joke — an ocean-going merchant fleet was created during World War II to secure vital supplies; this is the reason for the restrictions concerning ship-owning companies described in Chapter 2. Today, Switzerland has one of the most modern commercial fleets in the world.

The federally operated postal, telegraph, and telephone services are among the most efficient in the world. All mail should have a four-figure postal code number immediately preceding the name of the town, together with the national prefix CH (which stands for the Latin words *Confederatio Helvetica*) — for example, CH 1211 Geneva. The telephone service is excellent, and calls can be dialled directly to Western Europe, North America, Japan, and elsewhere. Telex facilities are available at most main post offices and in many hotels. Telephone calls may be charged to the person being called (with his agreement), but otherwise there are no credit facilities for visitors' telephone or telex calls.

## **Hotels and Restaurants**

Switzerland is noted for its efficient, comfortable, and spotless (although expensive) hotels. In general, accommodation is plentiful, but international conferences and trade fairs create heavy demands, and accommodation is best reserved well in advance. In Geneva or Zurich a single room with bath in a bath in a deluxe hotel would cost, with service charges, SF100 or more, and in a good small hotel, about SF60. Restaurants are varied and good; a reasonable meal with wine may cost up to SF50. Alcoholic drinks, tea or coffee, and cakes are served throughout the day.

## **Tipping**

In hotels, restaurants, and bars a service charge (usually 15%) is included in the bill, and additional tips are required only for extra service. Cloak-room attendants are given SF.50 unless a fixed price is shown; porters charge SF1 for each bag but expect a small tip in addition; and taxidrivers expect 10%-15% of the fare. Theatre usherettes are not tipped.

## **BUSINESS HOURS**

### **The Working Day**

**Commercial Hours.** Factories usually operate from 07.00 to 16.30 or 17.30, depending on the length of the midday break. Offices are normally open from 08.00 to 12.00 and 14.00 to 18.00, although there is a trend toward shorter lunch periods and earlier closing times. Businesses do not open on Saturday.

# Business Practices and Information

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**Government Offices.** Some begin at 07.30, have nearly two hours for lunch, and continue till 18.00, while others begin at 08.00, have less than one hour for lunch, and work till 17.30. None is open on Saturday. Post offices are generally open 07.30 to 12.15, 13.45 to 18.30, and 07.30 to 11.00 on Saturday, but at railway stations and airports extended facilities are available to deal with late-night mail. Customs offices are sometimes open early and late to allow prompt clearance of urgent consignments.

**Banks and Shops.** Banks are usually open 08.30 to 16.30, Monday - Friday, but hours vary. On one day a week, usually Friday, they stay open late — in Basel till 18.30, in Zurich till 18.00, and in Geneva till 17.30. Shops are generally open 08.00 to 18.30, Monday - Friday, and 08.00 - 17.00 on Saturday, but apart from the large stores, most close for an hour or more at midday. Shops must close for one half-day each week, so the large stores are usually closed on Monday morning, while smaller shops in the suburbs and country towns close on Wednesday or Thursday afternoon.

## Time Factors

Switzerland uses Western Continental European time, which is one hour ahead of Greenwich Mean Time. Time is not advanced during the summer months.

## BUSINESS PRACTICES

### The Businessman's Approach

The Swiss are considered to be conservative, with a reputation for deliberating long and carefully on any matter. Yet once they come to a decision, they conscientiously carry out their part of a bargain.

Swiss businessmen value efficiency and punctuality in attending to routine business matters. They expect prompt replies to letters and enquiries and dislike wasting time; they expect visitors to keep appointments and to come quickly to the point. They customarily shake hands on greeting and on saying good-bye to visitors. Prearranged appointments are essential for business calls. If it is necessary for a visitor to call without a prior appointment, he should not arrive at the beginning or end of the day, as his Swiss contact will then be dealing with his mail. A conservative suit is proper for all business occasions, and if invited to dinner at a private home, it is customary to take flowers or chocolates to the hostess.

As a customer, the Swiss businessman tends to be precise in his requirements. Price may not be the major determinant to him, but good service is of prime importance. Considerations such as quality of merchandise and

advance design and performance, prompt delivery, and good after-sales service carry much weight. Visits are important so that a foreign seller can gain first-hand knowledge of conditions in the exacting Swiss market and can establish good relationships with his agents, customers, and other business contacts.

While a Swiss businessman is often prepared to conduct business in a foreign language (especially English), it may sometimes be necessary to employ interpreters and translators. It is often difficult to obtain an interpreter at short notice, and arrangements should be made well in advance. Technical points to be discussed at a meeting should be described to the interpreter beforehand. A professional association that may be able to suggest suitable interpreters is the *Association Internationale des Interprètes de Conférences*, rue Ancien-Port 14, 1201 Geneva (tel.: 31.33.23).

## Public Holidays

Businesses are normally closed on the following public holidays:

New Year's Day	January 1	Whit Monday	May (varies)
Bank holiday (not all areas)	January 2	Corpus Christi (Catholic areas only)	May/June (varies)
Good Friday	March (varies)	Swiss National Day	August 1
Easter Monday	March (varies)	All Saints' Day (Catholic areas only)	November 1
Labour Day (not all areas)	May 1	Christmas Day	December 25
Ascension Day	May (varies)		

Additional local holidays are observed mainly in the spring and early autumn. December 26 is also often taken as a holiday when Christmas Day is close to a weekend, especially in Catholic areas.

## Weights and Measures

The metric system is used for all weights and measures. Temperatures are measured in Centigrade. Domestic electric supply is usually at 220 volts, and plugs have two or three round pins. Lamp fittings are of the screw-in type. Plug-adaptors may be necessary for appliances such as electric razors.

## Dates

The sequence in Switzerland, as in Europe generally, is day-month-year, so 6/7/78 in Switzerland should be read as 6th July 1978, and not June 7,



# Business Practices and Information

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1978, as in the United States. In 1971 Switzerland, like most other advanced trading nations, voted in favour of a new international standard for use when dates are expressed in figures only. Under this standard (not yet widely adopted) the sequence is year-month-day.

## **Writing Conventions**

Figures in Europe, including Switzerland, are often separated by periods, not by commas, but commas precede decimals. For example, 1.000,99 would be written in English-speaking countries as 1,000.99. The figure seven usually has a line drawn across the stem (i.e., 7), when written by hand, to differentiate it from the figures one and four.

## **Business Cards and Letters**

Business cards should always be used when calling on Swiss clients. Cards printed in German, French, or Italian as appropriate are preferable, but cards in other languages, especially English, are acceptable.

In their business correspondence, the Swiss are formal. Business letters should always be addressed to firms and not to individuals, as personally addressed letters will not be opened if the addressee is not at his office.



## CHAPTER VI

# Forms of Business Entities

- **PRINCIPAL BUSINESS ENTITIES**
- **CORPORATIONS - THE AG-SA FORM**
- **BRANCHES**
- **COMPANIES - THE GmbH-Sàrl FORM**
- **PARTNERSHIPS**
- **OTHER FORMS**

### PRINCIPAL BUSINESS ENTITIES

With the minor exceptions described in Chapter 2, there are no legal barriers to foreign investment in Switzerland, although some corporations have taken precautions in their own bylaws to prevent foreigners from acquiring their shares. If a foreigner is planning a direct investment (as opposed to a portfolio or stock exchange investment), he will normally obtain the agreement of the existing Swiss proprietors or will form a new entity where he can make his own rules. The form of the investment depends on the nature, size, and duration of the proposed activities and on the investor's financing requirements. This chapter deals with the formation and administration of the various types of business entities that may be established in order to make a direct investment in Switzerland.

Commercial operations in Switzerland are governed by the Code of Obligations described in Chapter 3. This Code applies throughout the country, unlike the tax and incentive laws which vary from canton to canton and even between communes. A Swiss partnership or other unincorporated body does not acquire legal personality but, like a corporation with separate legal identity, may acquire rights and obligations, own real estate, and sue and be sued in its own name. However he operates in Switzerland, a foreign investor must comply with the Code of Obligations, and in return he is generally entitled to the same treatment in law as a Swiss citizen.

### Summary of Business Forms

The main forms of commercial enterprise are:

1. Corporation or public company (*Aktiengesellschaft (AG) - Société Anonyme (SA)*). This is the usual form for all but the smallest enterprises and is the one always required if a public issue of shares is to be made, as for example, on a stock exchange. Members' liability is limited, and no restriction on the issue or transfer of shares or bonds is required by law (although the corporation's own bylaws may contain restrictions). It has separate legal identity.

# Forms of Business Entities

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2. Limited liability or private company (*Gesellschaft mit beschränkter Haftung (GmbH)* - *Société à responsabilité limitée (Sàrl)*). This type of company is suitable for smaller businesses. Members' liability is limited, but shares are not freely transferable. It too has separate legal identity.
3. General partnership (*Kollektivgesellschaft* - *Société en nom collectif (Snc)*). All partners have personal unlimited liability for all partnership debts.
4. Limited partnership (*Kommanditgesellschaft* - *Société en commandite (Sec)*). In this form general partners are fully liable as in a general partnership, but there can be one or more partners liable only to the extent of the capital they have contributed to the partnership. If limited partners' interests are represented by transferable shares, the limited partnership is known as a *Kommanditaktiengesellschaft (KAG)* - *Société en commandite par actions (Sca)*.
5. Branch of a foreign organisation (*Zweigniederlassung* - *Succursale*). This is not a separate entity but an establishment of its parent body, in whatever form that body carries on business.
6. Other forms include the short-term joint venture or simple partnership (*einfache Gesellschaft* - *Société simple*), the cooperative (*Genossenschaft* - *Société coopérative*) used for longer-term joint activities and for most trade unions, and the foundation (*Stiftung* - *Fondation*), an entity simple to form and maintain that resembles the trust in Anglo-American law. An association (*Verein*-*Association*) is sometimes used but not for profit-making businesses.

The terms 'holding company,' 'domiciliary company,' and 'service company' are often used in discussing operations in Switzerland. Such companies have tax advantages as described in Chapter 8 and others described later in this chapter, but they are not separate forms of business entity and may be organised as any of the corporate bodies mentioned. By far the most usual type of holding, domiciliary, or service company is the corporation. For tax reasons, a foreign company's group holding or sales operation in Switzerland is best kept separate from any manufacturing subsidiary there.

Recently there were reported to be over 80,000 corporations in Switzerland, compared with only 3,000 limited liability companies, 11,000 general and 4,000 limited partnerships, and 5,000 branches. As the corporation is normally the most suitable entity for a foreign investor, it is the form described in detail in this chapter.

## CORPORATIONS - THE AG-SA FORM

A Swiss corporation has the same major features as its counterparts in most other countries: limitation of shareholders' liability to the amount invested (plus any amounts unpaid on shares owned), ease of transfer of ownership, and continuity of business regardless of death or changes in management or ownership. However, Swiss corporations are subject to two restrictions not always found elsewhere: there is a minimum permitted share capital (SF50,000, but effectively SF20,000) and a requirement that a majority of directors must be Swiss citizens living in Switzerland. The second of these restrictions can be modified for certain holding companies.

### Formation

A location for the corporation's domicile or registered address must first be selected. Besides economic factors such as location of markets and availability of supplies, labour, and utilities, tax considerations and possible investment incentives are important elements in the selection of a location. The registered address and the actual location of operations need not be at the same place, although if they are not, investment incentives may be curtailed, and the operating location will be taxed as a branch in the canton where it is situated.

Swiss law recognises two forms of incorporation: the simultaneous and the successive methods. The simultaneous method is used when the founders have the necessary capital to set up the corporation and is the more common.

**The Simultaneous Method.** Under the simultaneous method, at least three founder-shareholders meet to establish the corporation and draw up its articles of incorporation or bylaws (*Statuten - statuts*). The founders must either deposit in an approved bank the capital they have agreed to subscribe in cash, or conclude a contract for the subscription of capital in kind (real estate, plant, goodwill, and licences). Rules for subscriptions are contained in the Code of Obligations. The contract must be authenticated by a notary, a legal official appointed under cantonal law.

There is no requirement in law that any of the founders must be Swiss citizens, and normally a corporation can be formed with three shareholders of any nationality. The Register of Commerce offices described in Chapter 2 now usually require the assignment by the founders of at least one

# Forms of Business Entities

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share to each director before registering the corporation, so in practice this means that at least one resident Swiss citizen will be involved with a new corporation from its earliest days. The founders, who may be individuals or corporate bodies, can act by proxy, so that any foreigners concerned do not have to travel to Switzerland specially for the formation meeting. Alternatively, the true founders can act through nominees.

After the formation meeting a document is prepared by the notary incorporating the minutes of the meeting and the articles, confirming the subscription of capital, stating any founders' privileges, and naming the founders, first directors, authorised signatories, and statutory auditors. This document must be in the language used in the canton in which the corporation's registered office is to be situated. The corporation comes legally into existence when this document, signed by all the founders, is filed in the cantonal Register of Commerce and the appropriate duty is paid. Until then, the corporation is unable to enforce any contracts, and the founders are personally liable for any actions in its name, although it may ratify the founders' actions after incorporation. After registration, the corporation is automatically listed in the Official Commercial Gazette, and the funds deposited in the approved bank are released for its use.

Formation by the simultaneous method and registration can usually be completed within a few days. While it is possible to buy a ready-made inactive corporation, there are usually no advantages in doing so.

**The Successive Method.** This is used when capital has to be raised from the public to start the business. Procedure is as follows:

1. The founders sign a preliminary draft of the articles of incorporation.
2. The founders publish a prospectus giving full details of the proposed corporation.
3. On the sale of shares, cash is deposited with an approved bank as it is not yet at the corporation's disposal.
4. After subscription of the full share capital, the founders call the subscribers to a constitution meeting where the final wording of the articles of incorporation is determined and the necessary officers are elected. Any provisions in the articles relating to capital contributions in kind or to benefits for the founders must be approved by holders of at least two-thirds of the capital.

**Corporate Name.** The name chosen for the corporation must be approved by the cantonal Commercial Registry. It must not conflict with any existing

name and must correspond with the facts. The name must indicate the firm's legal form and so must incorporate the initials 'AG' or 'SA' or the corresponding words in full.

National, regional, or territorial designations in a corporation's name (for example, 'Zurich Bank AG,' 'Swiss Cars SA,' or 'International Grocery SA') require official permission, and this is practically impossible to obtain for several reasons. The Swiss government wishes to prevent corporations emphasizing their importance by such designations or using them for advertising purposes. Also, the public must not be led to suppose that the corporation is the only one of its type in a certain region or that it is a government-owned organisation.

However, the denomination 'Swiss' in parenthesis is generally granted to the subsidiaries of foreign banks in order to avoid confusion with branches — for example, 'Chase Manhattan Bank (Suisse) SA.' This description is often imposed by the Federal Banking Commission.

**Articles of Incorporation.** The articles or bylaws must contain at least:

1. The corporation's name and domicile or registered office (*sitz-siège social*).
2. Its objects or purpose.
3. Amount of capital and the nature of the shares, by class and whether registered or bearer.
4. Par value of each share.
5. Provisions for general meetings and shareholders' voting rights.
6. Provisions for management, representation in dealings with third parties, and appointment of auditors.
7. Number of qualification shares the directors must deposit.
8. Means by which official notices will be published.
9. Details of any benefits to be granted to the founders.

Other nonobligatory provisions may be inserted, dealing for instance with classes of shares, conversion of registered shares to bearer shares and vice versa, restrictions on voting rights, restrictions on transfers of shares, and procedures for modifying the articles.

# Forms of Business Entities

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## Cost of Incorporation

Formation costs are broadly as follows:

Professional fees for preparation of formation contract and articles	About SF2,000-3,000 (more if unusual clauses are to be included)
Notary's fees for incorporation	Varies between cantons. In Zurich, for example, fees are 0.1% of share capital (minimum SF100 and maximum SF10,000), but in some other centres the rates are slightly higher.
Registration fees in Commercial Register	SF340 for capital up to SF200,000; thereafter 0.2% (two-thousandths) of further capital, with a maximum fee of SF8,000
Federal capital stamp duty	3% of the nominal capital (subject to challenge by referendum)

Provision should also be made for fees of professional advisers such as tax consultants, accountants, and translators. As a general indication the cost of forming a small corporation with a share capital of SF100,000 is likely to be around SF6,000.

## Shares and Shareholders

**Rules about Shareholders.** Although at least three shareholders are required for formation, the number can be reduced to one thereafter, unless any creditor decides to complain, whereupon the corporation may be required to increase the number of its shareholders to three again. It is quite usual for a corporation to have only one shareholder; it is then referred to as an *Einmanngesellschaft - Société à actionnaire unique*. Shareholders may be individuals or corporate bodies. If a corporation has more than one director it will always require more than one shareholder because all directors must be shareholders. Even so, true ownership can remain in the hands of one shareholder. Shareholders can act through nominees, and in any case the true ownership of bearer shares may be difficult to establish.

The Code of Obligations does not contain any restrictions on the nationality of shareholders. However, a few special laws applying to shipping and airline companies restrict shareholdings to Swiss nationals, and limitations

as to nationality can be introduced into any corporation's articles. Restrictions on transfer are sometimes required for other reasons and are often incorporated in the articles of small family-owned firms or subsidiaries of other corporations.

**Registered and Bearer Shares.** Registered shares (*Namensaktien* - *actions nominatives*) must indicate the amount paid in until they are fully paid, when they may be converted into bearer shares. Bearer shares (*Inhaberaktien* - *actions au porteur*) may be issued only if fully paid. Both registered and bearer shares may be issued by the same corporation, and the articles usually provide for the conversion of fully paid shares of one type into the other. In general, bearer shares are more usual although some corporations have reverted to the use of registered shares in an endeavour to limit foreign shareholdings. Bearer shares may be transferred simply by delivery to the new owner.

Registered shares are transferred by endorsement in favour of the new owner and inscription in the shareholders' register. The corporation will request evidence of the propriety of the transfer and will normally expect the endorsed share certificate and the instruction to transfer ownership to be submitted by a bank. The corporation will then insert the new holder's name on the share certificate. Where restrictions on transfers are contained in the corporation's articles, its approval must be obtained before the transfer is recorded and must be attested on the share certificate by a responsible official's signature.

Interim warrants are sometimes issued pending the preparation of share certificates.

**Minimum Capital and Share Size.** The entire share capital must be subscribed on incorporation, as Swiss law does not recognise authorised but unissued shares. The minimum capital is SF50,000, of which at least SF20,000 must be paid in on issue; for capital of SF100,000 or more, the minimum to be paid in is 20%. The remaining 80% may be left unpaid for years if desired, but the holder is always liable for the unpaid portion of his shares. Shares may be issued at a premium but not at a discount. They must have a par value of at least SF100 (except sometimes following a reorganisation), although higher denominations are often found. Swiss law does not allow the issue of shares with no par value.

**Classes of Shares.** Besides equity (ordinary or common) shares (*Stammaktien* - *actions ordinaires*), a corporation may issue preference shares (*Vorzugsaktien* - *actions privilégiées*), usually having prior rights to participation in profits. Preference shares may also have prior rights to assets on



# Forms of Business Entities

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dissolution or when new shares are being issued. Whatever their rights, they must be set out in the articles. Normally, each class of shares is entitled to nominate at least one representative to the board of directors. Voting rights are usually proportionate to share values. Although the articles may limit voting rights, every shareholder must have at least one vote, and nonvoting shares are not allowed. Another type of security known as a profit-sharing certificate is sometimes found; this is neither a share nor a bond but gives the holder rights to participate in profits or liquidation proceeds and sometimes to subscribe for new shares. This variety is known as a 'participating certificate' (*Genußschein - bon de jouissance*), while a 'founder's certificate' (*Gründeranteilschein - part de fondateur*) gives special preference to the founders.

Holders of such securities can never rank as creditors. A general meeting of shareholders cannot reduce the rights of profit-sharing certificate holders by changing the articles, unless a majority of holders of such certificates give their consent at a separate meeting. Securities other than equity shares are now rare.

When share capital is increased, the new shares can be offered to some privileged group only if so resolved at a general meeting or allowed by the articles. Otherwise, they must be offered to all shareholders.

A corporation may not acquire its own shares except to reduce capital, as part of a merger scheme, in satisfaction of a trade debt from a shareholder, or if its normal business is to deal in shares. Shares so acquired must be cancelled or resold without delay and in the meantime do not carry votes.

## Management

The authority to manage a corporation is delegated by shareholders to a management board (*Verwaltungsrat - Conseil d'administration*). The shareholders in general meeting form the ultimate controlling body in a corporation, and there is no supervisory board such as is found elsewhere in Europe. Instead, there is provision for the appointment of statutory auditors, a body similar to the 'commissaires' in French-speaking countries. While these statutory auditors are at times of great help to their corporations, they are often somewhat ineffectual because they are frequently insufficiently qualified for their task. They are described further in Chapter 7.

**Directors and Executives.** Every management board member (referred to here as a 'director') must be a shareholder, although if the articles so allow, he need hold only one share. Every corporation must have at least one director, but there is no maximum number. If there is only one director, he must always be a Swiss citizen resident in Switzerland. If there are

more than one, a majority must be Swiss resident citizens, but this rule may be relaxed for a holding company if the majority of its holdings are abroad. A corporate body cannot itself act as a director.

Foreign directors coming to Switzerland for meetings do not require work permits or similar documents, but executive directors remaining in the country must comply with the formalities described in Chapter 4.

Each director is appointed by the shareholders, who may also dismiss him. Initial appointments are usually for terms of up to three years, but thereafter appointment is usually for terms of up to six years. In practice, it is common to reelect directors each year. Classes of shareholders with differing interests must each be allowed their own representatives on the board, but there is no requirement for the appointment of any workers' representatives. If a government or public body is a shareholder, it may be given rights in the articles to appoint and dismiss certain representatives on the board.

The board's function is to manage the corporation's affairs, although executive duties may be delegated to managers or other officers with powers to sign on behalf of the corporation. Titles met in practice are:

Member of the management board (‘director’ in English)	<i>Verwaltungsrat - Administrateur</i>
Chief executive If a member of the management board	<i>Delegierter des Verwaltungsrates - Administrateur délégué</i>
If not a member of the manage- ment board	<i>General Direktor - Directeur général</i>
Manager	<i>Direktor - Directeur</i>
Assistant manager	<i>Vizedirektor - Sous-directeur</i>
Authorised employee	<i>Prokurist - Fondé de pouvoir</i>

Managers or other authorised signatories need not be Swiss citizens or residents, nor need they be shareholders, but if they are foreigners, they are bound, like any other employees, by the work permit and residence rules stated in Chapter 4. The directors have a duty to keep proper books and records, to prepare annual financial statements and narrative reports for submission to shareholders, and to call annual shareholders' meetings. Unless the articles provide otherwise, the directors are jointly responsible for the corporation's management, but at least one director must always have power to act on its behalf. Any limitation on the powers of directors

# Forms of Business Entities

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or managers to represent and bind the corporation has force internally but will not (with certain exceptions) affect the rights of third parties even if published.

Directors are remunerated by salaries or bonuses (*Tantieme - tantièmes*) or both. Shareholders' approval of bonuses is required before they may be paid. They must be paid solely from profits remaining after the required sum has been allocated to legal reserve and the shareholders have been given a dividend of at least 4% or such higher rate as is defined in the articles. Directors' bonuses, but not salaries, are normally disclosed in the financial statements or the accompanying report.

Directors must give guarantees for the proper performance of their duties by depositing their shares in the corporation at its registered office. The number of shares required is normally stated in the articles, but it is quite usual for a director to hold and deposit only one share. Guarantee shares may even be deposited by a third party.

The board normally elects from among its members a president and a secretary. Directors' meetings need not be held in Switzerland, and if all directors agree and record their votes in writing, meetings need not be held at all. Decisions must be recorded in formal minutes, even when a corporation has only one director. The articles define the quorum for a meeting; usually this is a majority of the directors. The president or chairman is often given a casting vote.

Directors are not legally required to disclose any conflicts of interest that might affect their actions, but they would normally do so. A director may borrow from his corporation, but any such borrowing would not have to be disclosed in its balance sheet.

**Shareholders in General Meeting.** A meeting of shareholders (*General Versammlung-Assemblée générale des actionnaires*) must be held within six months after the end of each financial year to approve the financial statements, release the directors from their responsibilities for the year, decide on the appropriation of profit, appoint directors and statutory auditors, and, if necessary, amend the articles. Financial years normally end on December 31.

The articles generally state where meetings are to be held; there is no requirement in the law for meetings to be held in Switzerland. They also set out the procedure for calling a meeting, specifying the business to be transacted. At least ten days' notice must be given. Registered shareholders must be notified individually in writing and bearer shareholders by advertisements in the Official Commercial Gazette and in the newspapers

named in the articles. Holders of at least 10% of the capital may request the board to call a general meeting and, if it does not, may obtain authority from the court to call such a meeting themselves. Meetings may also be called by the statutory auditors or even by liquidators or bondholders. Bearer shareholders prove their identity by producing either their share certificates or certificates from their banks confirming their holdings; there are rules to prevent improper borrowing of bearer share certificates in order to influence voting. If all shareholders are present and agree, a valid meeting can be held even if proper notice has not been given.

Financial statements, reports, and proposals for the appropriation of profits must be available to shareholders at least ten days before the meeting.

The law does not define the quorum necessary for a general meeting. The articles usually provide that the members present form a quorum, but for special business such as amendment of the articles or a resolution to dissolve, at least two-thirds of the share capital must be represented. In most cases, if the required two-thirds quorum for special business is not present, a further meeting must be called at which the quorum need be only one-third. Unless the articles provide otherwise, resolutions are passed by a simple majority of members present or represented, although resolutions to change the objects of the corporation, to create profit-sharing certificates or shares with special voting rights, or to amend shareholders' powers, require approval by holders of at least two-thirds of the share capital. Members may appoint proxies but cannot vote in writing. Proxies must be appointed in writing but need not themselves be members. Shareholders who have taken part in management are not allowed to vote on any resolutions for the release of directors from their responsibilities. Minutes of all meetings must be kept.

The directors must call an extraordinary meeting if 50% or more of the share capital is lost. If the shareholders consider that recovery is unlikely and that the company may become insolvent, a realisation balance sheet must then be prepared. Thereafter a reorganisation may be effected or dissolution commenced.

Although a resolution releasing the directors from their responsibilities is passed at a general meeting, any shareholder who did not approve that resolution may take action in the courts within six months for any damage caused by the directors or statutory auditors through negligence or intentional default or as a result of acts contrary to the articles or the law. Such court action is rare. Shareholders do not normally have rights of access to the corporation's books.

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**Statutory Auditors.** Every corporation must have at least one statutory auditor (*Kontrolstelle* - *contrôleur*). These officials are elected by the shareholders initially for one year but thereafter for terms of up to three years. Sometimes deputy or substitute auditors are also appointed. They need not be Swiss nationals and may be corporate bodies. They may not be directors or employees of the corporation, although they may be shareholders. Their duty is to examine the financial statements and books and to report to the shareholders thereon, stating whether or not they recommend the acceptance of the statements and the proposed distribution of profit. Their fees are fixed by the shareholders. As they are not required to have any professional qualifications, their work cannot often be equated with an 'audit' as this term is understood in many countries, and their function is closer to that of the supervisory boards found elsewhere in Europe.

Quite apart from the requirement to appoint statutory auditors, every corporation with a capital of SF5 million or more (and certain others) must appoint independent auditors as described in Chapter 7.

## Capital, Reserves, and Dividends

**Capital.** Minimum share capital has been described in the section on shares and shareholders. Further capital issues are not subject to any special rules and can be made at any time but only with shareholders' approval, because a capital increase requires an amendment to the articles. This applies even to a capitalisation of reserves by a bonus or stock issue or to capitalisation of loans by shareholders. Existing shareholders have prior rights to subscribe for new shares unless otherwise stated in the articles.

A capital reduction also involves an amendment to the corporation's articles and so must be sanctioned by a general meeting of shareholders. Capital may not be reduced below the legal minimum of SF50,000. The claims of creditors must be capable of being met despite the reduction, and to ensure this the Code of Obligations provides for a special audit and for publication of the reduction and procedures for dealing with claims.

**Reserves.** A legal reserve (*gesetzliche Reserve* - *Réserve légale*) must be built up from:

1. 5% of each year's profit after tax, after meeting any losses brought forward.
2. 10% of any amount paid as dividends or bonuses in excess of 5% on paid-in share capital.
3. Premiums on share issues (paid in surpluses) with minor exceptions.

The annual 5% transfers of profit to the reserve may cease when the legal reserve reaches 20% of paid-in share capital, but the other sources continue to apply. As a result, the reserve may become quite large.

The legal reserve may be used to:

1. Meet losses, if other reserves have been exhausted.
2. Support the company through periods of trade depression.
3. Mitigate the effects of unemployment by meeting exceptional redundancy or reorganisation payments.
4. Be capitalised or distributed as dividends only when the balance remaining exceeds 50% of paid-in share capital.

The articles may require higher figures than the 5% transfers and 20% level described above and may provide for the creation of other reserves. Holding companies, whose main object is to hold investments, whether Swiss or foreign, are exempt from the requirement that 10% of any distributions exceeding 5% of capital must be put to legal reserve and are not restricted as to the uses to which their legal reserves may be put. Insurance and public transport companies are subject to special regulations.

**Dividends.** Dividends may be paid only out of net profits after allocations to reserve or from reserves created from profits in previous years. Interest is not normally payable on share capital except sometimes during start-up or construction periods. Dividends are invariably distributed in cash, although there is no legal bar to scrip (stock) dividends. Interim dividends may not be paid; any payments to shareholders on account of expected dividends are treated as loans and may have to be repaid.

Bearer shareholders claim their dividends by submitting the appropriate coupons attached to their share certificates.

**Losses.** The requirement to take action when losses have absorbed half the share capital after all reserves have been used has been described earlier. If losses continue to rise until they equal the share capital so that the corporation becomes insolvent, the directors must inform the district court whose judge has power to declare the corporation bankrupt. If further capital cannot be introduced, the corporation must then be dissolved.

**Loan Capital.** There is no legally prescribed ratio of loan capital to share capital. Loan capital may either be secured on particular assets or unsecured and may be issued with rights of conversion into share capital. Issues are generally in the form of bearer bonds. The terms of issue are set

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out in a prospectus that must detail, among other things, the powers and rights of bondholders.

## **Registration and Publication Requirements**

The registration and publication of information required on the formation of a Swiss corporation is described earlier in this chapter. Changes in any of this information must be filed promptly in the Register of Commerce. Changes in the articles must have been authenticated by a notary before submission to the Registrar. If trade ceases, this must be reported to the Registrar together with the names of the liquidators.

Notices to shareholders concerning general meetings or payment of dividends must be made in accordance with the corporation's articles, no specific method being required by law. Frequently the articles provide that notices shall be published in two newspapers. A quoted corporation usually publishes its notices in newspapers circulating in the area of the stock exchange on which it is quoted. In addition, all notices must be published in the Official Commercial Gazette.

Tax returns are dealt with in Chapter 8.

Annual financial statements must be made available to shareholders, but do not have to be filed in the Commercial Register. A creditor of a corporation who can prove his interest has the right to inspect financial statements through the Register, but no other members of the public have such a right. Every corporation quoted on a stock exchange must make its financial statements available to the stock exchange authorities and to the public. The only other bodies required to disclose financial information are banks and financial institutions subject to the Federal Banking Law of 1971. Banks and financial companies that receive money from the public must publish their financial statements in the Official Commercial Gazette or a newspaper or make copies available to the public; in particular, copies of statements not published in the Gazette must be filed with the National Bank and made available to the press. Larger banks and financial companies must also publish interim financial statements in at least one newspaper, and insurance companies must publish their statements in the Gazette.

## **Dissolution**

A corporation may be dissolved in accordance with its articles or if its shareholders so resolve. Dissolution must also take place if insolvency proceedings are begun or an application is made to the court for various reasons. Unless remedial action is taken, dissolution is required if the majority of directors cease to be Swiss resident citizens. Dissolution may

also be applied for if the number of shareholders falls below three. The liquidators are usually, but not necessarily, the directors. At least one liquidator must be a Swiss resident. The fact of dissolution must be disclosed in letters and other business documents, and various other formalities must be complied with. Following a decision to liquidate, an announcement must be made to creditors in three successive issues of the Official Commercial Gazette, and final distribution of net assets to shareholders cannot be made until one year after the third publication of the announcement. The corporation's books must be retained for ten years following dissolution.

**Mergers.** A corporation whose assets and liabilities are taken over by another as a result of a merger scheme must be dissolved. The other corporation must keep the assets of the transferor separate until its creditors are paid, and only then can shares in the transferee corporation be issued to the shareholders of the transferor. If a merger is to take place by the formation of a new corporation to replace the existing separate corporations, the shares in the new corporation may only be issued to the members of the existing corporations after it has been duly registered and the shareholders of all the existing corporations have approved the scheme.

**Conversion.** Dissolution can be avoided by the conversion of a corporation into a limited liability company, provided that the minimum capital of SF50,000 for a corporation is maintained and that holders of two-thirds of the corporation's shares are participating in the new company's capital. Creditors of the corporation must be notified and invited to submit their claims; if they do not do so they become ordinary creditors of the new company. Conversion from a limited liability company into a corporation is not, however, allowed, and full liquidation and formation procedures must be followed.

## **Transfer of Domicile to Switzerland**

Swiss law provides an alternative to the formation of a new corporation when an existing foreign corporation wishes to transfer its registered office and management to Switzerland. If the foreign corporation is not required by the laws of its own country to dissolve when its registered office moves abroad, it may automatically form a Swiss corporation if it is properly constituted, adapts its articles to Swiss law, obtains federal government permission, and complies with certain other formalities. It must then register as a Swiss corporation in the Register of Commerce.

A corporation registered in Switzerland may transfer its registered office to another country if the laws of the other country allow, or to another canton within Switzerland.



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## BRANCHES

A branch office (*Zweigniederlassung* - *succursale*) is not a separate legal entity, but derives its rights and obligations from its parent body, whether Swiss or foreign. A branch may engage in all forms of business activity in Switzerland as if it were a separate entity, but procedures similar to those on formation of a corporation must be followed.

### Formation

The setting up of the branch must be recorded in the Commercial Register of the canton where the branch operates. Its name must be that of the parent body as used in its home country, indicating that it is a branch. The names of its directors, the address at which it is registered, a copy of its constitution document translated if necessary into an official Swiss language, its purpose and place of business, and the place of origin of the persons in charge of it must also be registered. Unless there is in the parent's home country a record corresponding to the Swiss Commercial Register, an official certification of the validity of the parent must be produced. Changes in any of the information filed must be notified to the Commercial Register.

Registration is simple, quick, and inexpensive. The branch can be registered as soon as its parent produces the documents required. No deposit of capital in an approved bank is required, and no notary's fees or stamp duties are payable. The only expenses are those for legal and other professional advice.

The administrative office in Switzerland of a foreign corporation is regarded in law as a branch, which must be registered just like a trading branch. If the foreign corporation takes the next step and transfers its management and centre of operations to Switzerland, it is necessary for it to transfer its registered office to Switzerland as already described.

### Administration

A branch must have at least one manager resident in Switzerland who must have the power to represent the branch there. If he is not a Swiss citizen, he must comply with the work permit and residence rules.

A Swiss branch of a foreign corporation is under the jurisdiction of the canton in which it is located with regard to all liabilities incurred as a result of its activities in that canton. The parent office does not become subject to Swiss law merely because it has a branch establishment there (however, see Chapter 8 for taxation questions); nor does the branch office become

liable for activities conducted in Switzerland by the parent on its own account and not through the branch. Nevertheless, the parent has full liability under Swiss law for the obligations of its branch, and this is one of the major drawbacks of the branch form. The branch must maintain its own accounting records and prepare balance sheets periodically in accordance with Swiss law; in particular, a clear record of the liabilities of the parent and the branch must be maintained. A branch operation does not have to publish financial information, but must file any changes in the information registered on formation concerning its parent body. Business documents must state the location of the parent as well as the address of the branch.

The factors usually considered in deciding whether to operate as a branch or a subsidiary corporation in Switzerland include the exposure of the parent to liabilities in Switzerland, the acceptance of the branch operating form in the Swiss market, the ability to obtain finance, and tax questions. As a rule, most foreign investors prefer to operate through a Swiss subsidiary rather than a branch.

## **COMPANIES - THE GmbH-Sàrl FORM**

The small limited liability company, a form of business entity provided for in most European countries, was introduced in Switzerland late in the 1930s. It has not been widely used, nearly all Swiss enterprises preferring to adopt the corporation form. Only a brief description of companies is given here, because in most ways the regulations are similar to those for corporations. The differences noted below may, however, make the *GmbH-Sàrl* form attractive to foreign investors.

### **Distinguishing Features**

In Continental Europe, the limited liability company, as distinct from the corporation, developed from the concept of a group of associates, usually with personal relationships like partners in an existing firm, seeking to trade with limited liability. This is different from the tradition in some other countries (notably the English-speaking ones) where companies with many thousands of shareholders and those with only two or three are organised under the same statute.

To a foreign investor, the most important features of the limited liability company are:

1. Capital structure. The minimum capital is SF20,000 and the maximum SF2,000,000. Members are jointly and severally liable up to the whole of the registered capital for all unpaid share subscriptions, not only for their own.

# Forms of Business Entities

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2. Members' interests. The minimum size is SF1,000. At least three-quarters of the members representing three-quarters of the capital must approve any transfer. The names of all members must be registered in the Commercial Register.
3. Managers. At least one manager must be a Swiss resident but not necessarily a Swiss citizen (there is no Swiss majority rule as for corporations). Managers need not be members of the company.
4. Auditors. There is no legal requirement for the appointment of auditors although such a requirement may be inserted in the articles.
5. Publication. Financial statements do not have to be filed at the Commercial Register or otherwise made public.

## Formation

Procedures, costs, and time involved are much as for corporations. Only two founder-members are required, and they can be of any nationality or legal form. Fifty percent of the capital must be paid in on formation, either by cash to an approved bank or by other consideration. The articles or bylaws must contain, in addition to the information listed earlier in this chapter, details of each member's share of the capital. In line with the concept of the company as an incorporated partnership, capital is not divided into 'shares' but into 'interests' (*Anteile - parts sociales*). Each member has only one share or interest, but these can be of different sizes as long as they are in multiples of SF1,000. A book must be kept to record members' interests, as no certificates are issued, and no agreement to transfer interests is binding on the company until it is recorded in this book.

While normally a three-quarters majority is required to approve a transfer, the articles may forbid transfers or impose limitations. Every transfer agreement requires authentication by a notary.

The company's name must include the initials *GmbH* or *Sàrl*, or the equivalent words, to indicate that its liability is limited.

## Management

All the members are jointly entitled to manage the company's affairs. In practice, management is usually delegated, either to certain members or to managers (*Geschäftsführer - gérants*).

In place of general meetings, resolutions in writing are permissible. Each SF1,000 of an interest entitles the holder to one vote unless the articles provide otherwise, and usually a simple majority of votes is sufficient to

pass a resolution. In order to amend the company's articles, at least three-quarters of the members representing three-quarters of the capital must approve. The resulting minutes of the meeting (or resolutions in writing) must be authenticated by a notary.

A *GmbH-Sàrl* may issue bonds.

## **PARTNERSHIPS**

### **General Partnership**

This form corresponds closely to general partnerships in most other countries. It is composed of two or more individuals, each of whom is actively engaged in the business and personally liable for the whole of the firm's debts. However, only natural persons may be partners, and so this form of organisation is not available to corporate investors in Switzerland.

There are no nationality or residence requirements for partners. A partnership must file certain details in the Commercial Register where it is to be located, and changes in these details must be filed also. Financial statements do not have to be made public. The firm's name must include at least one partner's name and must indicate that the enterprise is a partnership.

The partnership is created on the signing of a partnership contract. If special powers are given to certain partners, these must be disclosed in the Commercial Register. Retiring partners remain liable for five years for any debts incurred before their retirement, while new partners become liable for past as well as future debts.

### **Limited Partnership**

This form also corresponds to limited partnerships elsewhere. It includes both active and limited partners. The one or more active partners must be individuals, whereas the one or more limited partners may be either individuals or legal entities. The liability of the limited partners for the firm's obligations is restricted to the capital they have subscribed, while the active partners have unlimited liability.

The limited partners may not participate in the firm's management, nor may their names appear in the firm's name. A limited partnership comes into being when it is registered in the Commercial Register and not when the partnership contract is signed.

# Forms of Business Entities

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## Limited Partnership With Shares

This form is not often used, except where an original proprietor wishes to retain control of his business but needs to raise outside capital. The general partner or partners remain fully liable for the firm's debts, but the liability of the limited partners is only to the nominal amount of their shares. Shares are transferable, and in general, corporation law applies to the holders of share capital. Management is the responsibility of the general partners, although the limited partner-shareholders may exercise a supervisory role. This type of partnership is a separate legal entity.

## OTHER FORMS

### Sole Proprietorship

This is the simplest form of business entity, where the proprietor is personally fully responsible for its debts. If its sales are over SF100,000 a year or if it engages in certain types of business, it must be registered in the Commercial Register. Its name must include its proprietor's name and must disclose that it is not a legal entity.

### Cooperative

There are many cooperatives in Switzerland. They operate for the protection and promotion of their members' interests rather than as entities designed to make profits for investors. They participate principally in residential construction, local retail distribution, and the purchase and resale of farm produce. Labour unions are usually organised in this form also.

A Swiss cooperative has no fixed capital, because the number of its members may be constantly changing, although it must start with seven members. Its bylaws may provide for members' liability, but normally the liability of a cooperative is only for its existing capital. Each member normally has one vote. A cooperative is a separate legal entity, must be registered, and must have a statutory auditor. A majority of its directors must be Swiss.

### Joint Venture

This is known as 'simple (or ordinary) partnership' (*einfache Gesellschaft - société simple*). It is not a separate legal entity, has no separate legal name, and is not registered in the Commercial Register, although it may have an operating name for convenience. It is a loose form of association used for undertaking large construction contracts, underwriting share issues, or other temporary purposes. One participant usually manages the venture, but sometimes a separate corporation is formed to do so.

## **Foundation**

This entity is comparable to a trust in English-speaking countries, although it has few counterparts in Continental Europe. It cannot have a commercial object, but can be used to hold funds for charitable purposes or pension or welfare schemes or to provide family benefits. As a civil law entity, a foundation does not have to be entered in the Commercial Register and consequently may not trade. A foundation may be formed under the terms of a deceased's will or by execution of an agreement before a notary. In either case trustees are appointed to administer it in accordance with the will or agreement and to hold its property. Proposals have been made for the licensing of trustees, who would have to demonstrate their qualifications before being allowed to act.



- FORM OF FINANCIAL STATEMENTS
- ACCOUNTING PRINCIPLES AND PRACTICES
- AUDIT REQUIREMENTS AND PRACTICES
- PROFESSIONAL ACCOUNTING AND AUDITING ORGANISATIONS
- BOOKS AND RECORDS
- SWISS FINANCIAL STATEMENTS

## **FORM OF FINANCIAL STATEMENTS**

### **Legal Requirements**

The Code of Obligations contains only minimal requirements concerning the form and content of Swiss financial statements. The Code requires that at the end of each financial year every business must prepare an inventory, a balance sheet, and an income statement or a profit and loss account. Every corporation must in addition submit to its shareholders a written report by its board of management on the financial position of the business and the proposed appropriation of the year's profit.

Financial statements must be drawn up in accordance with accepted accounting principles and must be complete, clear, and accurate. These terms are not defined in the Code, but the requirements are interpreted to mean that assets or liabilities may not be excluded and that all figures must be accurately described and properly classified. The Code is concerned to see that the financial statements never present a situation as better than it really is.

However, there is nothing in the Code to prevent the financial statements showing an understated position. The undervaluation of assets and the creation of secret reserves are permitted if deemed desirable to assure the security and continued prosperity of the business or the equalisation of dividends and therefore are widely practised. Although the creation and release of secret reserves must be reported to the statutory auditors, there is no requirement for disclosure to shareholders or others.

The Swiss professional accounting body has issued recommendations on accounting matters aimed at making accounts more informative, but most enterprises base their financial statements on the more permissive rules of the Code. The conservative traditions of the Swiss investment community have had a significant effect on accounting practices and on the form of financial statements, and this is likely to continue.

# Accounting and Auditing

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A proposed amendment to the Code would go some way toward introducing the 'fair presentation' concept familiar in many other countries. This amendment would require the publication of consolidated statements in some cases and would limit the use of secret reserves; releases from these reserves, although not the extent of any balances remaining, would have to be disclosed. Even if approved, this amendment will not become effective for some years.

## **Layout and Content**

There is no standard format for annual financial statements. The balance sheet is frequently in double-sided form, with assets usually in order of liquidity on the left and liabilities and shareholders' funds on the right, and income statements are frequently double-sided also. Statements must be presented in Swiss francs. No particular language is specified in the Code for use in financial statements, although in practice they are prepared in the language commonly used where the enterprise is registered.

The financial statements must be signed by a responsible official such as a director or partner and must be made available to shareholders and, if appropriate, to the stock exchange. The Code requires information to be disclosed on contingent liabilities, guarantees, and charges on assets. Provision for all anticipated losses must be made, and post balance sheet events must be commented on, if material, in the management report. Voluntary disclosure practices are described below.

Banks, mutual investment funds, and insurance corporations have additional responsibilities, mainly set out in the Federal Banking Law of 1971. These are the only enterprises required by law to publish annual accounts in the Register of Commerce and Official Commercial Gazette.

## **ACCOUNTING PRINCIPLES AND PRACTICES**

### **General Principles**

Some valuation principles set out in the Code apply only to corporate bodies and others to all entities. The general rule is that assets may not be valued at more than their worth to the business, and this rule has sanctioned the tradition of stability and safety through the use of secret reserves rather than the alternative concept by which financial statements are designed to show a 'true and fair view.' The descriptions of specific principles that follow apply mainly to corporations.



## Bases of Accounting

Accounting policies need not be described in financial statements. Changes may be made in accounting bases, and transfers to and from secret reserves may be effected, without disclosure. Profit and loss figures may thereby be distorted, quite acceptably from the Swiss point of view, although the balance sheet position may never show a financial position better than it really is. Moreover, accounting and tax figures must conform in that deductions to be claimed for tax purposes must be set up in the books of account, and thus if tax allowances exceed what is reasonable for commercial purposes, income statements may not present a 'fair view.'

## Inventories

Inventories of raw materials, work in progress, and finished goods must be valued at or below the lower of cost and net realisable value. Cost is not defined by law; in practice, average cost is used, and manufacturing overheads are generally included. As with all assets, management must make provision against possible losses, and in practice, inventories are generally understated in the balance sheet. To obtain tax concessions, a corporation with detailed inventory records may value its inventories at up to one-third lower than cost or net realisable value.

## Fixed Assets and Depreciation

Fixed assets must not be written up over cost less accumulated depreciation. Cost may include the capitalisation of interest charges on money used for the construction of new facilities. Long-term noncancellable leases are not capitalised.

Depreciation is not generally based on the life of the asset, but arbitrary percentages are selected; the declining balance method is probably the most common. Rates frequently applied are:

	<b>Declining Balance</b> %	<b>Straight Line</b> %
Furniture and fixtures	15-20	7½-10
Industrial machinery	25	12½
Motor vehicles	30	15

Rates of depreciation may be higher if depreciation claimed for tax purposes is higher. Depreciation may be written directly off the asset or accumulated in a separate provision account that is shown on the liabilities side of the balance sheet.

# Accounting and Auditing

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Intangibles are generally amortised over their assumed useful lives (say 25% on declining balance), and formation and organisation expenses may be written off at once or over not more than five years.

## Investments

Securities quoted in Switzerland must be valued at or below the average of the stock exchange prices in the month preceding the balance sheet date. For securities quoted only outside Switzerland a deduction from this average may be made to cover transfer costs. Unquoted securities must not normally be valued at more than cost, and allowance may be made for diminution in value. Revaluation is permissible only in special circumstances.

## Revaluation Practices

Under the Code of Obligations, upward revaluation of fixed assets is not permitted. In practice, such a revaluation may be made provided the following conditions are met:

1. The amount is material and of a lasting nature and is supported by an expert's opinion.
2. The profit on revaluation is disclosed in the income statement.
3. The profit on revaluation is used only to offset losses.
4. The auditors' report gives details of the revaluation.

Some indication of the replacement cost of fixed assets is given in financial statements, however, because values for insurance purposes must be disclosed in the balance sheet.

Inflation accounting methods have not been adopted.

## Taxation

Tax is levied on the accounting profit shown in the annual accounts because book and tax treatment must normally conform. Deferred taxation accounts are not therefore required. Tax charges included in income statements are normally those assessed in the year and not the liability based on the profit for the year.

## Consolidation Practices

There are no legal requirements to prepare consolidated accounts, although in recent years many corporations have voluntarily included consolidated financial statements and group statistics in their published ac-

counts. None however has yet taken the further step of accounting for investments in associates on the equity basis.

## **Mergers**

The 'pooling' concept is not followed, every merger being treated as a purchase of one entity by another.

## **Other Points**

The only legal requirements concerning the management report which must accompany the financial statements are that it must deal with activities, results, and financial position. Usually, this report comments in detail on various figures in the balance sheet and income statement and shows the sources and applications of funds. The report must always contain the board's proposals on the appropriation of the year's profit, because proposed dividends and other allocations are not usually shown in the balance sheet; sometimes two balance sheets are presented, respectively showing the positions before and after the proposed appropriations.

Provisions for depreciation and doubtful accounts are sometimes shown on the liabilities side of the balance sheet instead of being deducted from the assets concerned. Reserves are generally created by the annual general meeting as appropriations of profit, whereas provisions are decided by management to cover contingencies and risks and are recorded as a charge to the income statement. Legal reserves must be maintained as described in Chapter 6. Reserves may be created for reinvestment or similar purposes; they may be in the form of 'business crisis reserves' described on page 110. Unpaid capital is shown in the balance sheet as an asset. Unrealised foreign exchange losses are provided for. Capital expenditure commitments are rarely disclosed, and comparative figures are rarely given.

Redemption values of bonds or debentures must be disclosed in the balance sheet. Discounts on the issue of bonds may be written off by annual instalments, as long as the whole amount is dealt with by the last redemption date, whereas premiums payable on redemption need not be provided for until the last redemption date. Secured liabilities are often disclosed, as this is considered good practice although not required by law.

Turnover, cost-of-sales, directors' remuneration, and other income statement information often given in other countries are not usually disclosed in Switzerland. The notes used in other countries to amplify or describe figures in the financial statements are usually included in the management report.

# Accounting and Auditing

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Subsidiaries of foreign companies usually prepare financial statements following, wherever possible, their parents' accounting practices. Where these differ from practices required by Swiss law, the differences are usually quantified in supporting notes or reports.

## AUDIT REQUIREMENTS AND PRACTICES

### Legal Requirements

Audits are required by law only of corporations, cooperative societies, banks, and those limited liability companies that are required by their articles of association to appoint an auditor. The Code of Obligations provides for four different types of audit.

**Statutory Audit.** All the enterprises listed above must appoint at least one statutory auditor whose duty is to examine the balance sheet and income statement of the company. He must determine that the financial statements agree with the books of account and that those books have been properly kept. Without his report, shareholders in general meeting are not permitted to pass any resolution concerning the accounts.

A statutory auditor needs no professional qualifications either by experience or training. The only restrictions on anyone's right to be appointed as a statutory auditor are that directors and employees of the appointing corporation may not act, and foreigners may not audit the financial statements of shipping companies.

**Independent Audit.** As the statutory auditor's examination is often of little value because of his lack of professional qualifications, the Code applies a stricter rule to every corporation that has a share capital of SF5 million or over or that has sought capital from the public through a bank placing, even with a smaller share capital. This rule requires a further examination of the balance sheet by independent professional auditors. The Code does not define what is meant by 'professional auditors,' but the general practice is to restrict the meaning to members of the professional bodies described later in this chapter.

The examination of the independent auditors will normally be more thorough than that of the statutory auditor. Their report, which must be submitted to the directors and to the statutory auditor but not to the shareholders, is also generally much more detailed. The statutory and independent auditors may be the same person if all the legal requirements are met, and there are obvious advantages if this can be arranged in that duplication of work may be avoided, and the report of the statutory auditor is likely to be more useful.

**Reduction of Capital.** Shareholders in general meeting are not permitted to pass any resolution concerning the reduction of share capital until an audit report has been presented to them which states that the demands of creditors will be fully covered by the available assets after the share capital has been reduced. This report must be prepared by a person appointed by the directors and approved by the federal government, usually a fiduciary and accounting firm or member of the bank audit association, described later.

**Banks.** Banks are subject to additional regulations which require annual examinations by either an approved fiduciary and accounting firm or a member of the bank audit association. A long-form audit report must be prepared by the auditor dealing with all the matters set out in the 1971 Federal Banking Law. The bank auditor and the statutory auditor may be the same person, if all legal requirements are met. Unlike other auditors, a bank auditor may not be a shareholder of the bank he is auditing.

## **Audit Standards**

Standards of independent audit vary widely as the auditing profession is still developing, although its status is rising fast. In 1971 the controlling professional organisation issued an 'Audit Handbook' setting out generally accepted auditing standards and procedures. While practice is by no means uniform, the trend among the leading audit firms is toward more comprehensive procedures and additional disclosures in financial statements, despite the traditional Swiss attitude toward secrecy and freedom in financial transactions. Accordingly, the auditing practices of countries with developed auditing professions are becoming more common in Switzerland. Auditors are now beginning to examine internal controls and attend physical stocktakings, and the secrecy traditions are being relaxed in order that auditors may obtain direct confirmations of accounts receivable, accounts payable, and bank balances.

As the annual general meeting may be held up to six months after the date of the annual accounts, auditors have time to examine post balance sheet events. Most audits are conducted at a single visit after the end of the financial year.

## **Audit Reports**

Because secret reserves are officially acceptable and there is no requirement to comment on a 'fair view,' the auditor's position in Switzerland, whether he is the statutory or the independent auditor, differs from that in many countries.

# Accounting and Auditing

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The statutory auditor must submit his report to shareholders at the annual general meeting. It is generally a short-form report in which he must state:

1. Whether the financial statements truly reflect the company's financial position as recorded in the books of account.
2. Whether the books of account have been properly kept.
3. Whether the results and financial position shown conform to legal and statutory valuation requirements.

Any irregularities or deficiencies must be reported by the statutory auditor to the person directly responsible and also to the chairman of the management board. The statutory auditor reports to shareholders on such matters only when they are considered serious. He does not mention consistency or fairness of presentation for the reasons already described, nor does he comment on movements in secret reserves unless authorised by the board to do so. The statutory auditor must also express an opinion on the appropriation of profit proposed by the board and must recommend to shareholders the acceptance or rejection of the financial statements. Without the statutory auditor's report no resolution may be passed in general meeting concerning the financial statements. The statutory auditor may be liable for damages to creditors and shareholders if he fails to fulfill his duties.

The report of the independent auditor generally includes detailed comments on all items in the accounts, although normally it does not include recommendations concerning internal controls. The audit procedures followed may also be set out in certain circumstances, for example, for investment funds. This audit report is submitted to the directors and the statutory auditor but not to the shareholders. There is no standard form as there is for a statutory audit report.

## Changes of Auditors

The statutory auditor is appointed by the shareholders as described in Chapter 6. A change may be effected by a simple majority vote at a general meeting.

The independent auditor is appointed by the management board and may be replaced by the board, except that a bank auditor can only be changed with the consent of the Banking Commission.

## PROFESSIONAL ACCOUNTING AND AUDITING ORGANISATIONS

Anyone may act as a public accountant or statutory auditor in Switzerland, whether he has any professional qualifications or experience or not. It is, however, a growing practice for corporations to appoint only qualified members of the professional accounting bodies as statutory auditors or independent accountants.

There are three Swiss professional bodies of accountants and a separate organisation for qualified bookkeepers.

### **The Swiss Chamber of Trustees and Accountants**

Founded in 1925, this Chamber (*Schweizerische Treuhand-und Revisionskammer - Chambre Suisse des Sociétés Fiduciaires et des Experts-Comptables*) is the controlling organisation for the three professional accounting bodies. It is responsible for qualification rules and examinations, professional ethics, and standards. Its constituent bodies are the Society of Certified Accountants, the Association of Fiduciary and Accounting Firms, and the Association of Bank Auditors. The Chamber was a founder-member of the European *Union des Experts-Comptables*, but is not a member of the International Accounting Standards Committee.

The Society of Certified Accountants (*Verband Schweizerische Bucherexperten - Association Suisse des Experts-Comptables*) consists of individual accounting experts who have had at least six years' experience in accounting and auditing work and who have passed written and oral examinations set by the Chamber under the supervision of the Federal Ministry of Economics. Such individuals are entitled to be known as Certified Accountants (*Eidgenössischer Diplomierter Bucherexperte - Expert-Comptable Diplômé Fédéral*) and are recorded in an official register. The Society currently has about 1,000 members, practising either on their own or as members of partnerships or corporate entities.

The Association of Fiduciary and Accounting Firms (*Vereinigung Schweizerischer Treuhand-und Revisionsgesellschaften - Union Suisse des Sociétés Fiduciaires et de Revision*) comprises those accounting firms organised as separate legal entities with limited liability and with capitals of at least SF100,000, which is the usual practice in Switzerland. There are currently about 40 such firms, employing nearly 3,000 staff. Members of such firms are often, but need not necessarily be, Certified Accountants. Officers of these firms (that is, directors or managers) allowed to sign audit reports must be Certified Accountants. Accountants qualified in other countries may be officers of accounting firms, and sev-

# Accounting and Auditing

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eral of the large international accounting groups established themselves in Switzerland in this way many years ago. Most of the bigger Swiss firms were founded by banks.

Members of the Society and the Association offer a wide range of services, including:

- Statutory audits and independent auditors' examinations
- Tax returns and consultancy
- Management consultancy
- Legal and bankruptcy services and services as executor or trustee
- Directorships and management of companies
- Accounting and bookkeeping

The Association of Bank Auditors (*Vereinigung der Bankrevisions Verbände - Syndicat de Revision des Banques*) is a small body of specialists in the audit of commercial and savings banks regulated by the Federal Banking Law of March 1971.

## **Certified Bookkeepers**

The Union of Federally Certified Bookkeepers (*Vereinigung Eidgenössischer Diplomierter Buchhalter - Association Suisse des Comptables Diplômés*) consists of accountants with federally controlled qualifications. They are not concerned with auditing and are mostly employed in the accounting departments of industrial or commercial firms.

## **Rules and Ethics**

The Chamber published rules in 1968 that are binding on all members. Failure to observe these rules is penalised and could mean disqualification from membership in serious cases.

The rules include the following:

1. Members must practise their profession in a manner deserving of the confidence placed in them. They must perform their assignments diligently according to the law and must abstain from any activity inconsistent with the reputation of the profession.
2. Members must observe professional secrecy.
3. Members must remain fully independent in the execution of their duties.



4. Members must not compete for clients or staff in an unethical manner and may advertise only in a professional manner.
5. Members must limit the signature of audit reports to senior staff with professional experience (usually only Certified Accountants).

A statutory auditor may not be a director or employee of the enterprise being audited. He may be a shareholder (except in the case of a bank audit), although good professional practice requires that a qualified accountant acting as statutory auditor should not be a shareholder. There are no legal requirements concerning the appointment of independent auditors, but they are expected to adopt an independent approach to their duties in accordance with Rule 3 above. An audit firm is not precluded from providing bookkeeping services to its audit clients, but assistants who have prepared the books may not take part in the audit, and the independent professional attitude of the audit staff must be preserved.

A proposed revision of the Code of Obligations would strengthen the position of auditors if it is adopted, probably in several years' time. Larger corporations would always be required to appoint qualified professionals as their statutory auditors; employees of auditors would not be allowed to become directors or managers of client companies; and the scope of the auditors' examination would be extended, although it would continue to exclude any review of management.

A committee of the Swiss Chamber of Trustees and Accountants was set up in 1962 to study auditing and reporting standards. It has no authority yet to impose standards on the profession, and only issues recommendations. The results of its work have been put together in an audit and report writing manual which, although not yet complete or formally approved or adopted by the members of the Chamber, illustrates the profession's increasing awareness of the need for standardisation and definition of generally accepted auditing and accounting principles.

## **BOOKS AND RECORDS**

### **Legal Requirements**

All enterprises required to register in the Register of Commerce must keep proper books and records. The precise records required are not defined and depend on the nature of the business, but in all cases they must be sufficient to show the firm's financial situation, disclose its assets and liabilities, and enable accurate financial statements to be prepared. Accounting records do not have to be stamped or officially authenticated.

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Records may be maintained in any language and currency, although annual financial statements must always be expressed in Swiss francs.

All books, vouchers, and correspondence should be kept in Switzerland and must be retained for at least ten years. They must be available for periodical examination by the tax authorities.

## **Management Accounts**

Budgeting and cost accounting techniques and the production of management reports and interim financial information are common in subsidiaries of foreign parents, notably where there is any influence from the United States. Swiss-owned firms employ these techniques less frequently. Swiss accountants and executives are aware of management accounting practices and generally understand them, but may not have had much practical experience of them.

## TERMS USED IN SWISS FINANCIAL STATEMENTS

ENGLISH	GERMAN	FRENCH	ITALIAN
<b>BALANCE SHEET</b>	<b>BILANZ</b>	<b>BILAN</b>	<b>BILANCIO</b>
<b>Assets</b>	<b>Aktiven</b>	<b>Actif</b>	<b>Attività</b>
<b>Current Assets</b>	<b>Umlaufvermögen</b>	<b>Actif Mobilisé</b>	<b>Sostanza Circolante</b>
Cash and bank balances	Flüssige Mittel (Kassa, Banken, Postcheck)	Liquidités (Caisse, banques, chèques postaux)	Liquidità (Cassa, banche, Conto Chèques Postali)
Notes receivable	Besitzwechsel	Effets à recevoir	Effetti attivi
Marketable securities	Wertschriften	Titres de placement	Titoli
Accounts receivable	Debitoren	Débiteurs	Debitori
Trade, less provision for doubtful accounts	Kundenguthaben, abzüglich Delcredere	Clients débiteurs, moins provision pour débiteurs douteux	Debitori (clienti), Delcredere
Other	Übrige Forderungen	Autres débiteurs	Debitori (altri)
<b>Inventories</b>	<b>Warenvorräte</b>	<b>Marchandises-stock</b>	<b>Scorte</b>
Raw materials and supplies	Roh- und Hilfsstoffe	Matières premières, fournitures	Materie prime e merci
Work in process	Angefangene Arbeiten	Travaux en cours	Lavori in corso
Semifinished and finished goods	Halb- und Fertigfabrikate	Produits semi-ouvrés et produits finis	Prodotti semi-finiti e finiti
<b>Prepaid expenses and deferred charges</b>	<b>Transitorische Aktiven</b>	<b>Actifs transitoires</b>	<b>Sospesi attivi</b>
<b>Fixed Assets</b>	<b>Anlagevermögen</b>	<b>Actif Immobilisé</b>	<b>Sostanza Fissa</b>
Property	Grundstücke und Gebäude	Immeubles	Immobili
less provision for depreciation	abzüglich Abschreibungen	moins - amortissements	/.. ammortamenti
Land	Grundstücke	Terrains	Terreni
Factory buildings	Fabrikgebäude	Bâtiments industriels	Stabile industriale
Apartments and houses	Wohnhäuser	Immeubles locatifs	Casa d'abitazione
<b>Plant and equipment less provision for depreciation</b>	<b>Betriebseinrichtungen abzüglich Abschreibungen</b>	<b>Installations moins - amortissements</b>	<b>Impianti /.. ammortamenti</b>
Machinery	Maschinen	Machines	Macchine
Tools	Werkzeuge	Outils	Attrezzi e mobili
Furniture and fixtures	Möbiliar	Mobilier	Mobili
<b>Motor vehicles less provision for depreciation</b>	<b>Fahrzeuge, abzüglich Abschreibungen</b>	<b>Véhicules moins - amortissements</b>	<b>Automezzi /.. ammortamenti</b>
Investments	Beteiligungen	Participations	Titoli di partecipazione
Long-term loans	Langfristige Darlehensforderungen	Prêts à long terme	Prestiti a lunga scadenza
<b>Intangibles</b>	<b>Rechtswerte</b>	<b>Valeurs Incorporelles</b>	<b>Immateriali</b>
Patents and trademarks	Patente, Markenwert	Brevets, marques	Brevetti e licenze
Organisation expenses	Organisationskosten	Frais de premier établissement	Spese d'organizzazione
Capital not paid-in	Nicht einbezahltes Aktienkapital	Capital non versé	Capitale non versato
Loss carried forward	Verlustvortrag	Perte reportée	Perdita riportata

# Accounting and Auditing

## TERMS USED IN SWISS FINANCIAL STATEMENTS (continued)

ENGLISH	GERMAN	FRENCH	ITALIAN
<b>BALANCE SHEET</b>	<b>BILANZ</b>	<b>BILAN</b>	<b>BILANCIO</b>
<b>Liabilities</b>	<b>Passiven</b>	<b>Passif</b>	<b>Passivita</b>
<b>Current Liabilities</b>	<b>Kurzfristige Verbindlichkeiten</b>	<b>Dettes à Court Terme</b>	<b>Debiti a Breve Scadenza</b>
Accounts payable	Kreditoren	Créanciers	Creditori
Suppliers	Lieferanten	Fournisseurs	Fornitori
Advances received from clients	Anzahlungen von Kunden	Avances reçues des clients	Anticipi ricevuti da clienti
Other	Übrige Kreditoren	Autres créanciers	Altri creditori
Bank overdraft	Bankschulden	Dettes bancaires	Debiti bancari
Notes payable	Schuldwechsel	Effets à payer	Effetti passivi
Dividends payable	Dividendenschulden	Dividendes à payer	Dividenti
Accrued liabilities and deferred income	Transitorische Passiven	Passifs transitoires	Sospesi passivi
<b>Long-Term Debt</b>	<b>Langfristige Verbindlichkeiten</b>	<b>Dettes à Long Terme</b>	<b>Debiti a Lunga Scadenza</b>
Provision for contingencies	Rückstellungen	Provisions	Accantonamenti per rischi
Long-term loans	Darlehensschulden	Emprunts à long terme	Mutui passivi a lunga scadenza
Loan secured by mortgages	Hypothekarschulden	Dettes hypothécaires	Debiti ipotecari
Bonded loans	Obligationsanleihen	Emprunts par obligations	Prestiti in obbligazioni
<b>Shareholders' Investment</b>	<b>Eigenkapital</b>	<b>Fonds Propres</b>	<b>Capitale Proprio</b>
Capital stock	Aktienkapital	Capital-actions	Capitale sociale
Legal reserve	Gesetzliche Reserve	Réserve légale	Riserva legale
Special reserve	Spezialreserve	Réserve spéciale	Riserva speciale
Profit carried forward	Gewinnvortrag	Bénéfice reporté	Utile riportato

## TERMS USED IN SWISS FINANCIAL STATEMENTS (continued)

ENGLISH	GERMAN	FRENCH	ITALIAN
INCOME STATEMENT	ERFOLGSRECHNUNG	COMPTE D'EXPLOITATION	CONTO D'ESERCIZIO
<b>Operating Revenue</b>	<b>Betriebsertrag</b>	<b>Produits d'Exploitation</b>	<b>Ricavi d'Esercizio</b>
Net sales	Verkaufserlös	Ventes nettes	Ricavo netto
Inventory changes in semifinished and finished goods	Veränderung der Bestände an Halb- und Fertigfabrikaten	Variations du stock de produits semi- ouvrés et de produits finis	Variazione scorta dei prodotti semi- finiti e finiti
Own construction costs capitalized	Eigene Herstellung von Anlagen	Construction d'immobi- lisations par l'entre- prise pour ses propres besoins	Fabbricazione in proprio di impianti
Royalties	Lizenzeeinnahmen	Redevances	Ricavi da licenze
Interest income on operating funds	Betrieblicher Zinsertrag	Intérêts (produits) sur les fonds investis dans l'exploitation	Ricavi per interessi sul capitale d'esercizio
<b>Cost and Expenses</b>	<b>Betriebsaufwand</b>	<b>Charges d'exploitation</b>	<b>Costi d'esercizio</b>
Purchases of material and merchandise	Material - und Warenaufwand	Matières premières et auxiliaires	Acquisto di materie prime e ausiliarie
Payroll costs	Personalaufwand	Salaires	Costi del personale
Interest expenses	Schuldzinsen	Intérêts (charges)	Costi per interessi sul capitale d-esercizio
Depreciation	Abschreibungen	Amortissements	Ammortamenti
Administrative expenses	Verwaltungskosten	Frais d'administration	Costi amministrativi
Selling expenses	Vertriebskosten	Frais de vente	Spese di vendita
<b>Operating Profit</b>	<b>Betriebsgewinn</b>	<b>Bénéfice d'Exploitation</b>	<b>Utile d'Esercizio</b>
<b>Other Income and Expenses</b>	<b>Übriger Aufwand und Ertrag</b>	<b>Autres Charges et Produits</b>	<b>Costi e Ricavi Estranei</b>
Income from securities and investments	Ertrag aus Wertschriften und Beteiligungen	Revenus des participations et titres	Redditi da partecipazioni e titoli
Interest income on nonoperating funds	Neutrale Zinserträge	Intérêts reçus sur les fonds non engagés dans l'exploitation	Reddito per interessi gestione estranea
Other non- operating income (expense)	Betriebsfremder Erträge (Aufwand)	Autres revenus (charges) hors exploitation	Costi e Ricavi della gestione estranea
<b>Income before Taxes</b>	<b>Gewinn vor Steuern</b>	<b>Bénéfice avant Impôts</b>	<b>Utile Prima delle Imposte</b>
Taxes	Steuern	Impôts	Imposte
<b>Net Income</b>	<b>Reingewinn</b>	<b>Bénéfice Net</b>	<b>Utile Netto</b>



## CHAPTER VIII

# Taxation in Switzerland

- INTRODUCTION
- DIRECT CORPORATE TAXATION —  
FEDERAL, CANTONAL, AND COMMUNAL
- DIRECT TAXATION OF INDIVIDUALS —  
FEDERAL, CANTONAL, AND COMMUNAL
- FEDERAL ANTICIPATORY OR WITHHOLDING TAX
- DOUBLE TAXATION AGREEMENTS
- FEDERAL STAMP DUTIES AND OTHER TAXES
- CANTONAL AND COMMUNAL WITHHOLDING  
AND OTHER TAXES
- FEDERAL INDIRECT TAXATION

## INTRODUCTION

### The Importance of Cantons and Communes

Just as the Swiss constitution is unique in the emphasis that it places on the status of the cantons, so the Swiss tax system is unique in the importance of the cantons and communes in the raising of direct taxes on income and capital.

Until a nationwide system of taxation becomes a reality, Switzerland's tax structure will remain complex because of the powers of the three levels of government — federal, cantonal, and communal — to charge taxes simultaneously on the same taxable bases, both income and capital.

The federal government levies a federal defence tax applicable throughout the country, principally on income. Each of the 25 cantons also taxes income and capital, with different surcharges for each of the 3,000 or so communes, and despite some similarities, the cantonal taxation systems differ greatly in their determination of income, personal allowances and deductions, and tax rates. There is thus plenty of scope for 'canton shopping' for tax incentives and favourable systems.

The cantonal and communal direct taxes are much more important to taxpayers than the federal defence tax, as indicated in the following very broad analysis of total taxes raised:

# Taxation in Switzerland

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## Federal Taxes

	%	%	%
<i>Direct</i>			
Federal defence tax (about 40% from corporations and 60% from individuals)	8		
Anticipatory (withholding) tax, stamp duties, and minor taxes	<u>7</u>	15	
<i>Indirect</i>			
Customs duties (about 50% derived from fuel)	17		
Sales tax	14		
Excise taxes	<u>4</u>	<u>35</u>	50

## Cantonal and Communal Taxes

<i>Direct</i>			
Taxes on income and net worth (about 23% from corporations and 77% from individuals)	45		
Inheritance and transfer taxes	<u>3</u>	48	
<i>Indirect</i>			
Sundry taxes (mostly on automobiles and trucks)		<u>2</u>	<u>50</u>
			<u>100</u>

In this chapter the Swiss tax system is analysed as follows:

1. Direct taxation of corporate bodies and other business forms
  - a. Federal
  - b. Cantonal and communal
  - c. Taxation of special types of corporations
2. Direct taxation of individuals
  - a. Federal
  - b. Cantonal and communal
3. Federal anticipatory (withholding) and other taxes and double taxation agreements
4. Cantonal and communal withholding and other taxes
5. Federal indirect taxation

Even though federal taxes are in general applied in the same manner throughout the country, their incidence varies slightly from canton to can-

ton, as indicated later. The special treatments accorded to holding, domiciliary, sales, and service companies are described separately after the sections on federal, cantonal, and communal taxes on corporations generally. Most of the variations in taxes of interest to foreign investors occur because of the cantonal and communal differences.

## Legislation

The federal government has exclusive jurisdiction over customs duties, stamp duties, and various excise taxes such as those on the production or importation of distilled alcohol and tobacco. It also levies taxes on the income of individuals, on the income and net worth of legal entities (the federal defence tax), and on sales (the federal sales tax). The cantons also have a constitutional right to levy taxes, and to confer part of their powers on the communes. In practice, the cantons and communes levy taxes on income, net worth, capital gains, immoveable property, and other minor items. Taxes are therefore levied at present at all three levels of government. Customs and excise duties are mentioned in Chapter 3.

A thorough reform of Swiss direct taxation is being prepared, the objective being to harmonise cantonal and communal taxes to ensure that, among other things, definitions of taxable income and net worth and assessment procedures will be uniform throughout the country and, presumably, in keeping with the characteristics of a revised federal defence tax. Only personal deductions and tax rates would be left to the discretion of the cantons and communes so that they might retain their jealously guarded financial autonomy. This reform will bring about extensive amendments to cantonal and communal corporate and individual taxes, but for constitutional reasons it will probably be some years before it is effected.

## **DIRECT CORPORATE TAXATION — FEDERAL, CANTONAL, AND COMMUNAL**

### **Federal Defence Tax**

The federal defence tax (*Eidgenössische Wehrsteuer - Impôt pour la défense nationale*), so called from the reason for which it was introduced, but to be renamed the 'direct federal tax,' is the principal federal tax on corporate income and net worth. The portion levied on income is a graduated tax based on the relationship of profit to capital and reserves, while the portion levied on net worth is a supplementary tax on capital and reserves. The rules concerning this tax are doubly important because cantonal and communal taxes on income and net worth generally follow the same rules, with certain exceptions mentioned later.



# Taxation in Switzerland

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**Liability to Tax.** The federal defence tax decree applies to the following:

*Corporations Domiciled in Switzerland.* This classification includes corporations, limited liability companies, limited partnerships with share capital, and, usually, cooperative societies. In this chapter all these entities are called 'corporations' unless the context requires otherwise. 'Domiciled' refers primarily to the location of the registered office, since this is where management and control are normally exercised. Thus while in theory it may be possible to prove that a corporation is not domiciled in Switzerland because its management and control are exercised abroad, in practice every corporation with a Swiss-registered office is domiciled in Switzerland and so liable to federal defence tax. On the other hand, it is not impossible for a foreign-registered corporation to be treated as domiciled in Switzerland.

*Other Legal Entities Domiciled in Switzerland.* This heading includes associations, foundations, public bodies, and ecclesiastical institutions. In general, these are subject to federal defence tax although there are exemptions for churches, charities, and the like.

*Foreign-Domiciled Corporations.* A foreign corporation that has a permanent establishment in Switzerland is liable to the federal defence tax in respect of that establishment. Foreign corporations are also liable to tax if they own or have a beneficial interest in real estate in Switzerland or if they have any beneficial interest in any debt secured by way of mortgage on real estate situated in Switzerland.

In principle, Switzerland taxes that proportion of worldwide profits and capital that is attributable to the permanent establishment or other interest concerned, and this is done by calculating notional liability to Swiss tax on worldwide figures and then apportioning this between Swiss and other income. In practice, and in accordance with special provisions of double taxation agreements, other methods of apportionment are sometimes used.

*Partnerships.* Federal defence tax on individuals is described later in this chapter. It is sufficient here to state that general business partnerships are tax-transparent and thus are not taxed as such, each partner's share being taxed on him as an individual.

Federal defence tax on corporations is charged on income and on net worth, but for an individual it is charged at present only on income.

**Computation of Income.** While the Swiss Code of Obligations defines in broad terms what bookkeeping and accounting methods are to be fol-

lowed, it is the tax law that states what constitutes taxable profit. Usually the taxable profit is determined from the books of the enterprise, but the net profit shown by the books may be increased by adding back expenses not deductible for tax purposes. Tax and commercial accounting do not therefore necessarily conform.

Normally all expenses considered ordinary, necessary, and reasonable for business purposes may be deducted from income to arrive at taxable profit. The principal items of income and expense that are of interest in the computation of taxable income are described below.

**Valuation of Assets — General Principles.** The Code of Obligations requires that assets (including inventories, rights, patents, and trademarks) may be valued no higher than the lower of cost or net realisable value. An exception is made for any quoted security, which may be valued at the average of its quotations during the month preceding the date of the balance sheet. Lower valuations than the above are permissible under Code provisions although these may conflict with tax law provisions. The 'lower of cost or net realisable value' principle enables an enterprise to deduct unrealised losses, while paying tax on profits only when realised.

**Capital Gains and Losses.** Generally speaking, capital gains and losses of corporations are treated as ordinary trading gains and losses for federal defence tax purposes. For depreciable assets, the basis for determination of the gain or loss is acquisition cost less depreciation deducted for tax purposes. There is no reduction in the gain varying with the length of time the asset has been owned, nor is there any difference in the rate of tax from that charged on trading income.

If a Swiss corporation transfers assets such as shares to an affiliate, arm's length value must be adopted for the transaction, or the corporation runs the risk of being taxed on a hidden distribution.

Gains or losses on disposals of real estate held as business assets are treated as ordinary trading gains and losses, although in computing gains the cantonal real estate gains tax is not a deductible expense. Gains made on the disposal of real estate outside Switzerland are not usually taxed, as explained in the following paragraph.

**Income from Foreign Branches.** The treatment of income arising through a Swiss corporation's foreign permanent establishment or foreign real property depends on the terms of any applicable double taxation agreement. If no treaty exists, the income from the foreign permanent establishment is generally dealt with as follows. The appropriate rate of Swiss tax based on the corporation's worldwide income is computed, but this

# Taxation in Switzerland

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rate is applied to the Swiss income only, to give the tax payable. The apportionment of income that is therefore necessary between the resident head office and its permanent establishments located abroad may be made in one of several ways: usually the relevant income statements or profit and loss accounts, prepared on arm's length principles, would be used; alternatively, the apportionment could be based on such factors as turnover, capital employed, or number of employees. The latter methods allow for the set-off of losses occurring in such permanent establishments.

Many of the double taxation agreements entered into by Switzerland, however, provide that the arm's length accounts of the permanent establishments must be used for the purpose of allocating profits.

Unless double taxation agreements provide to the contrary, the Swiss tax authorities will expect the Swiss head office to have contributed some part at least of worldwide income, and it is not usually possible to contend that all income has arisen abroad. Normally, between 10% and 30% of worldwide income will be deemed to have arisen in Switzerland as a result of head office activities. The treaties with Ireland and the Netherlands expressly provide for this.

**Dividends from Swiss Corporations.** The gross amount of dividends is included in income for federal defence tax purposes, and the anticipatory tax withheld is refunded on application to the federal authorities. A corporation controlled by foreigners may be denied this anticipatory tax refund unless the conditions similar to those set out in the tax treaty abuse decree (discussed later in this chapter) are met. If the dividends received are from a shareholding that ranks as a 'substantial interest,' relief may be due as described on page 113.

**Dividends from Foreign Corporations.** Treatment varies; normally the net amount received in Switzerland is taxed together with any relief that may be recoverable under a double taxation treaty. If the shareholdings from which the dividends arise are 'substantial interests,' relief will be due.

**Credit for Foreign Withholding Taxes.** A federal government decree of August 22, 1967, provides that corporations may claim relief for taxes withheld (and not refunded) by some foreign treaty countries on dividends, interest, and royalties receivable in Switzerland. The relief so accorded cannot be higher than the Swiss taxes due on the respective income. Only corporations that meet the requirements of the respective treaty — and also comply with the 1962 tax treaty abuse decree — are entitled to relief. The conditions for this relief and the ways it is applied are complex and are beyond the scope of this business study to describe.

**Royalties.** Royalties received from foreign sources are treated as ordinary income. Relief is given for foreign withholding taxes suffered in accordance with appropriate double taxation treaties; if no such relief is available, the foreign taxes are treated as reductions of the royalty income.

In general, royalties paid by Swiss corporations are deductible, subject to any restrictions contained in the treaty abuse decree of 1962, but royalties paid by Swiss branches to their head offices would not be considered allowable deductions.

**Depreciation.** Expenditure for the purchase or improvement of capital assets is not deductible in the year incurred, but as in other countries is dealt with by periodic depreciation charges. Tax and book depreciation need not conform, but tax depreciation may not exceed that entered in the books.

The declining balance method is more common, although the straight line method is also used. The maximum declining balance depreciation rates normally allowed are:

	%
Flats (apartments) owned by business enterprises	1
Commercial property such as offices and shops	2
Hotels and restaurants	3
Industrial buildings and workshops	5
Tanks and conduits	15
Office and workshop equipment	20
Intangibles (patents, trademarks, and goodwill)	25
Manufacturing machinery	25
Automobiles of all kinds and machinery in multishift use	30
Hand tools and small equipment	35
Installations for treating water pollution	50

If the straight line method is used, these rates are usually halved. In extraordinary circumstances, higher rates may sometimes be allowed. When a depreciated asset is sold, the difference between the sale proceeds and the net book value is treated as ordinary trading profit or loss. There are no special rollover or recapture provisions.

**Inventory Valuation and Reserves.** The federal defence tax rules are silent on inventory valuation, but the Code of Obligations stipulates that inventories should not be stated higher than the lower of cost or net realisable value. An enterprise having valid grounds for using another method of inventory valuation may ask the tax authorities for a ruling on that method for tax purposes, and it should be used consistently thereafter.

A significant factor in Swiss inventory valuations is the allowance for tax purposes of hidden inventory reserves. After the reduction of inventory to the lower of cost or net realisable value, enterprises may further reduce

# Taxation in Switzerland

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values by up to one-third to provide for possible future losses. Any greater reduction will require justification to the tax authorities by establishing special need. These reserves are usually allowable for cantonal as well as federal tax purposes.

This reduction is a general reserve applicable to the entire inventory and not to selected items. A detailed list of inventory, with costs and net realisable values, must be maintained to satisfy the requirements of the tax authorities.

**Recession or 'Business Crisis' Reserves.** A recession reserve may be set up by any private business enterprise, although its establishment is entirely voluntary. At least 60% of the reserve must be invested in interest-bearing federal government bonds, and the reserve must be shown separately in the accounting records.

These reserves are designed to reduce investment activity during economic booms and to stimulate investment and reduce unemployment during periods of economic crisis. Permission to use the reserves must be given by the Federal Council. In 1975, certain industries that were suffering from the world recession, including watchmaking, textiles, and clothing, were permitted to use their reserves for the first time since 1951. The reserves may not exceed 50% of the highest of:

1. Annual wages and salaries
2. Insurance value of plant and moveable assets
3. Value of inventories held

Transfers to recession reserves are not deductible at the time they are made for the purposes of tax on income, and the reserves form part of taxable capital and reserves for net worth tax purposes. However, in the year in which the funds representing the reserves are used for purposes permitted by the Federal Council, tax may be refunded on application by the taxpayer. This refund comprises the difference between the tax actually paid in the years in which the reserve was built up and what would have been paid had the amounts transferred been tax-deductible at the time. A full refund of tax will be made only if the taxpayer invests sums equalling the recession reserve, plus the applicable refund, in industrial or commercial buildings, Swiss-made plant and machinery, employees' housing, or in certain circumstances for research, training, or repairs of existing equipment. The refund is itself treated as taxable income of the year in which it is received, but the related assets acquired may be immediately depreciated for tax purposes by an equivalent amount.

**Operating Losses.** Operating losses may only be carried forward, not back, and the carryforward period is very limited. Since assessments are

based on a two-year computation period (discussed later in this chapter), a loss in one year of a two-year computation period is automatically offset against the profit in the other year in computing the average profit for the two-year period. If the loss in one year is greater than the profit in the other, or if there is a loss in both years, the resulting loss may be carried forward only into the next computation period.

Computation periods always start with an uneven-numbered year, and the effect of the two-year period system is therefore to allow losses made in an uneven-numbered year to be carried forward up to three years. For example, a loss incurred in 1975 (reduced by any smaller profit in 1976) may be offset against profits in the next computation period, 1977-78. Losses made in an even-numbered year, on the other hand, can be carried forward only up to two years: for example, a loss in 1976 (reduced by any smaller profit in 1975) will also be offset against profits in 1977-78. This system is also applied by many of the cantons for cantonal tax purposes.

**Interest.** Interest paid on business borrowings is an allowable deduction. However, if the relationship between the taxpayer's equity capital and the loan capital from related parties is unreasonable — that is, if the corporation is 'thinly capitalised' — part of the interest expense may be disallowed. The expected ratio of equity to loans is usually 1:6. If interest payable to an affiliated company is disallowed, a hidden distribution arises so that taxable profit is increased and anticipatory tax payable. Usually the question of interest deductibility is considered in the light of the treaty abuse decree provisions. Interest paid to or received from affiliates is subject to maximum and minimum permitted levels respectively. These are published and change with market conditions. They are used to determine whether the Swiss corporation has traded at arm's length with its affiliates and thus to compute disallowable interest expense, the amount of hidden distributions, and imputed income if necessary.

**Bad Debts.** Bad debts written off and specific provisions for doubtful debts are tax-deductible. In addition, a general provision may be created, usually a maximum of 5% of outstanding domestic receivables and 10% of foreign receivables at the year-end; these percentages may be increased in special circumstances.

**Taxes.** The federal defence tax itself and cantonal and communal taxes on income and net worth are deductible in determining taxable income. These taxes are deductible either in the year paid or in the year incurred, depending on the corporation's accounting method. Because cantonal and communal taxes themselves vary, the incidence of federal defence tax differs from canton to canton and is not standard throughout the country as might be supposed. This is illustrated in the table on page 117.

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**Formation and Organisation Expenses.** Incorporation expenses in Switzerland, including fees and registration costs, are charged to the profit and loss account as incurred and are immediately tax-deductible.

**Salaries and Related Payments.** Salaries and fringe benefits of management board members as well as employees are deductible. Management board salaries are examined closely to determine whether they are reasonable or whether they are in fact hidden distributions of profits that should be disallowed in arriving at net income for tax purposes and should further be subject to anticipatory tax as profit distributions.

**Charitable Donations.** Donations to charities devoted exclusively to public service are deductible without limit. This usually applies for cantonal purposes also, although in some cases percentage limits are applied.

**Entertaining Expenses and Business Gifts.** Such expenses are deductible provided they are necessary. For business gifts, information about the recipient must usually be supplied to the tax administration since they are taxable on the recipient and may also be treated as a hidden distribution.

**Legal and Professional Expenses.** These are deductible if justified by business needs and if not in connection with a shareholder's own interests.

**The Arm's Length Principle.** In dealing with multinational enterprises, the Swiss federal tax authorities apply the arm's length principle to transactions with foreign affiliates. Costs must be justified commercially (Article 49 of the Federal Tax Decree and similar cantonal tax laws), or they will be adjusted for tax purposes. In the multicantonal transactions of Swiss enterprises, the same problems have long been dealt with on the arm's length principle. The fact that no rules have been developed for international transactions (unlike the United States, for example) may well be because the tendency is to shift profit into Switzerland from abroad rather than vice versa.

Adjustment practices are fairly liberal, but improper shiftings of profit will be adjusted if they represent hidden distributions.

**Computation of Net Worth.** Federal defence tax is also charged on net worth at the beginning of each assessment period. Net worth comprises the following:

1. Paid-in capital, together with any share premium or paid-in surplus credited to legal reserve.
2. Open reserves, that is, the reserves shown in the balance sheet, including recession reserves, profit surpluses carried forward after proposed distributions, and general (free) reserves.

3. **Taxed hidden reserves.** For example, if in the published financial statements inventories have been written down by one-half although for tax purposes they may only be written down by one-third, the difference would have to be added to open reserves for net worth tax purposes.

Net worth does not include the value of foreign permanent establishments or real estate; taxable capital is reduced in the proportion that these assets bear to total assets.

**Special Treatment for Substantial Interests.** If one corporation has a 'substantial interest' in another, relief from federal defence tax on income may be due. An interest is 'substantial' if it consists either of 20% of the stock of a Swiss or foreign corporation or represents a value for tax purposes of at least SF2 million. Ownership of such a substantial interest is the only criterion for obtaining favourable tax treatment. The holding of a substantial interest is quite distinct from the special rules applicable to holding companies described later in this chapter, the attraction of which arises from reductions in cantonal and communal taxes.

Substantial interest relief is given for federal and cantonal tax purposes by reducing the amount of tax on the total net income of the corporation in the proportion that dividends received from the substantial interest bear to total gross income (or, in some cantons, to net income). Relief is given only on the income element of the federal defence tax and not in respect of the net worth element. A corporation may carry on any other activities inside or outside Switzerland besides the holding of interests in other enterprises without affecting the substantial interest relief.

**Administration.** Although federal defence tax is imposed by the federal government, it is assessed and collected by the cantonal tax authorities. These authorities also levy the cantonal and communal taxes, and for this reason each taxpayer usually submits a single return to the local tax office as the basis for all three groups of taxes, unless assessment periods do not coincide. The fact that there are 25 different cantonal tax authorities dealing with federal defence tax leads to some disparity in the treatment of this tax from canton to canton.

**Prior Rulings.** The cantonal tax authorities are usually willing to give prior rulings on the tax treatment of particular transactions in their canton for both cantonal and federal purposes. Rulings in respect of federal taxes can also be obtained from the federal tax administration. Before initiating an investment in Switzerland involving any unusual transactions, a foreign investor should instruct his local tax advisers to obtain a prior ruling from the tax authorities whenever necessary. Once given, such a ruling is usually adhered to by the tax authority.



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**Taxable Periods.** *Tax on Net Income (Reinertragssteuer - Impôt sur le bénéfice net).* The tax on net income is usually assessed for a period of two calendar years called an assessment period, although it is levied annually. The nineteenth assessment period is 1977/78. Since at the beginning of an assessment period the income for these two years is not known, the tax assessment is based on the average net income for the preceding two years, called the computation period. The nineteenth assessment would therefore be on the actual incomes for the two years 1975/76. If a corporation's accounting year is not the calendar year, the assessment is based on its two accounting years ending within the computation period.

When a corporation commences business, an assessment is made based on the initial year's profits; a corporation may thus be taxed on the profits of its first year's trading for up to three years. It may be advantageous for a corporation to defer the date of its first accounts (for example, if results are poor) so that the low initial profits form the basis for assessment for the maximum number of years or initial losses are fully utilised. The first accounting period may be as long as 24 months, so that considerable scope for planning exists.

*Tax on Net Worth. (Kapitalsteuer - Impôt sur le capital).* Net worth for the purpose of this tax is the amount of paid-in share capital and reserves as defined on page 112 on January 1 of the first year of the assessment period. Thus for 1977/78, the tax payable for both these years is based on the capital and reserves as at January 1, 1977.

If the corporation's financial year does not end on December 31, net worth is taken as that at the immediately preceding balance sheet date. For a new corporation, net worth is taken as its initial capital until the first balance sheet is prepared. Further share capital issues by a corporation affect its net worth, and assessments are made to take this into account.

**Tax Rates.** The rates of federal defence tax on net income are progressive, depending on the percentage of income to capital, with a minimum at present of 3.63% and a maximum of 9.8%. These rates do not change frequently.

In addition to the present basic rate of 3.63% on taxable net income, there is a first surcharge of 3.63% on taxable net income in excess of 4% of the appropriate capital (or, if appropriate capital is less than SF50,000, on the net income in excess of SF2,000) and a second surcharge of 4.84% on taxable net income in excess of 8% of appropriate capital (or, if appropriate capital is less than SF50,000, on the net income in excess of SF4,000). The maximum rate imposed, however, is 9.8% of profit for tax purposes.

The appropriate capital (sometimes called 'ratio' or 'proportionate' capital) is computed in the same way as already described for net worth but at different dates. It is usually the average of capital and reserves at the beginning of each of the two accounting years ending within the computation period.

The rate of tax on net worth is at present a fixed 0.0825%.

The following example of a federal defence tax computation for 1975/76 assumes a corporation with a domicile in Canton Zurich, profit adjusted for tax purposes of SF50,000, and appropriate capital of SF100,000.

<b>Tax on Net Income</b>	<b>Net Income SF</b>	<b>Tax Rate %</b>	<b>Tax Payable SF</b>
Profit adjusted for tax purposes	50,000		
<i>Deduct</i> federal and cantonal taxes thereon (deductible expenses for federal defence tax purposes per table on page 117 rounded off to nearest SF100)	<u>18,900</u>		
	31,100	3.63	1,129
<i>Deduct</i> 4% of taxable capital	<u>4,000</u>		
Excess subject to first surcharge	27,100	3.63	984
<i>Deduct</i> further 4% of taxable capital	<u>4,000</u>		
Excess subject to second surcharge	<u>23,100</u>	4.84	<u>1,118</u>
Total tax on net income on this basis would be			<u><u>3,231</u></u>
This is more than maximum tax of 9.8% on profit for tax purposes (SF31,100); therefore the maximum applies, and tax on net income is 9.8% of SF31,100			3,048
<b>Tax on Capital</b>			
SF100,000 at 0.0825%			<u>82</u>
<b>Total federal defence tax payable for 1975/76</b>			<u><u>3,130</u></u>

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Illustrations of the combined effect of federal and cantonal/communal taxes, showing how the total liability can vary widely depending on the corporation's canton of residence, are given in the table on page 117.

**Returns, Payments, and Appeals.** As explained earlier, it is usual for the returns relating to federal, cantonal, and communal taxes to be combined, all taxes being computed from one return. Two returns may be required if the cantonal and federal computation and assessment periods do not coincide (that is, if there are one-year cantonal computation and assessment periods as indicated in the table on page 120).

Federal defence tax is due on March 1 following the end of each year of the assessment period. If it is not paid within 30 days thereafter, interest (nondeductible) at 6% is charged from March 31, but there is no other penalty or fine for late payment.

A taxpayer may appeal against an assessment made by the cantonal tax authorities, in which case the assessment must be re-examined by a review board within the tax office. The result of this re-examination may be challenged by either the taxpayer or the federal/cantonal tax administration. The dispute must then be submitted to the proper appeal court of the canton concerned and if necessary to the supreme federal court for a final ruling. Additional assessment to correct errors or omissions must usually be made within three years after the end of the appropriate tax period.

Tax audits are carried out by the cantonal tax office for federal and cantonal purposes. There is no rule as to their frequency, and tax authorities have full discretion to decide if and when a full audit is required or what additional information or documentation is needed for tax assessment purposes.

## Cantonal and Communal Taxes on Corporations

**Explanation of Tax Rates.** For the purpose of cantonal and communal taxes on income, the basic tax rates are generally computed from percentages of taxable income to taxable capital. Taxable capital in this context is usually that at the beginning of the computation period, or the average taxable capital in the case of a two-year computation period. This percentage is then multiplied by a fraction, varying between cantons (in Zurich, for instance, it is one-half). To the resulting rate is applied a series of multiples, one for the canton, one for the commune, and to support the Catholic and Protestant churches throughout the country, one for the church. This procedure is illustrated in the example on page 121. The multiples are revised periodically to take account of the revenue requirements of the authorities concerned. What constitutes taxable income is described later in this chapter.

Net worth tax rates also vary from canton to canton. Taxable capital for net worth tax purposes is computed as previously described, sometimes at the beginning of the computation period and sometimes at its end.

In every case cantonal and communal taxes together are higher than federal taxes, except sometimes in the case of holding or domiciliary companies as described later. Of necessity, this chapter cannot detail the 25 different tax systems — soon to be 26 — and can only summarise the position. It is essential that a prospective investor make detailed investigations at cantonal level whenever the tax effect of any particular transaction is being considered.

## Intercantonal Comparison of Combined Tax Rates on Legal Entities.

The table on this page indicates the wide differences that exist between the various cantons, not only in methods of computation and whether taxes are themselves deductible or not, but also in tax rates and multiples, and compares the results of their various tax systems.

The table shows the annual taxes on legal entities, such as ordinary trading corporations, with adjusted profits before tax of SF50,000 and taxable capital and reserves of SF100,000. The computations include communal taxes at the cantonal capital city rates for 1975, the latest published in this comparative form.

Canton		Net Profits for Calculation of Tax		Amount of Tax on Income and Net Worth					
		Canton & Commune	Federal	Canton & Commune		Federal		Total	
		SF	SF	SF	%	SF	%	SF	%
Aargau	(1)	37,200	37,200	9,080	18.16	3,728	7.46	12,808	25.62
Appenzell-Ausserrhoden		50,000	37,200	9,062	18.12	3,728	7.46	12,790	25.58
Appenzell-Innerrhoden	(3) A	50,000	37,800	8,429	16.86	3,786	7.57	12,215	24.43
	B (1)	38,100	38,100	8,029	16.06	3,816	7.63	11,845	23.69
Basel-Land	(1) (2)	35,500	35,500	10,915	21.83	3,561	7.12	14,476	28.95
Basel-Stadt	(1)	36,100	36,100	10,336	20.67	3,620	7.24	13,956	27.91
Bern		50,000	33,900	12,750	25.50	3,404	6.81	16,154	32.31
Fribourg	(1)	37,100	37,100	9,220	18.44	3,718	7.44	12,938	25.88
Geneva	(1) (4)	34,000	34,000	12,592	25.18	3,414	6.83	16,006	32.01
Glarus	(1)	36,200	36,200	10,145	20.29	3,630	7.26	13,775	27.55
Graubunden		50,000	38,200	7,987	15.97	3,826	7.65	11,813	23.63
Lucerne	(1)	34,300	34,300	12,229	24.46	3,443	6.88	15,672	31.34
Neuchatel	(1)	38,100	38,100	8,123	16.25	3,816	7.63	11,939	23.88
St. Gallen	(1)	38,000	38,000	8,188	16.38	3,806	7.61	11,994	23.99
Schaffhausen		50,000	33,100	13,520	27.04	3,326	6.65	16,846	33.69
Schwyz	(1)	36,200	36,200	10,234	20.47	3,630	7.26	13,864	27.73

### Notes:

1. Taxes are deductible for cantonal/communal tax purposes.
2. No tax deduction allowed for communal tax.
3. Corporations can choose between:
  - A — being taxed at rates for individuals
  - B — being taxed at rates depending on earnings-to-capital ratio.
4. Business tax ignored.

(continued)

# Taxation in Switzerland

Canton	Net Profits for Calculation of Tax		Amount of Tax on Income and Net Worth					
	Canton & Commune	Federal	Canton & Commune		Federal		Total	
	SF	SF	SF	%	SF	%	SF	%
Solothurn	50,000	32,500	14,188	28.38	3,267	6.53	17,455	34.91
Thurgau	50,000	34,500	12,030	24.06	3,463	6.93	15,493	30.99
Ticino	50,000	33,400	13,260	26.52	3,355	6.71	16,615	33.23
Unterwalden-Nidwalden	50,000	38,300	7,843	15.69	3,835	7.67	11,678	23.36
Unterwalden-Obwalden	50,000	36,400	9,900	19.80	3,649	7.30	13,549	27.10
Uri	50,000	37,200	9,055	18.11	3,728	7.46	12,783	25.57
Valais	50,000	35,000	11,522	23.04	3,512	7.02	15,034	30.07
Vaud	(1) 35,900	35,900	10,530	21.06	3,600	7.20	14,130	28.26
Zug	50,000	37,700	8,484	16.97	3,777	7.55	12,261	24.52
Zurich	50,000	31,100	15,778	31.56	3,130	6.26	18,908	37.82

Notes:

1. Taxes are deductible for cantonal/communal tax purposes.

It is very important to realise that other levels of profit and capital can result in very different taxation charges because of the possible variations in specific corporations' profit-to-capital ratios, and this table must be treated merely as an illustration of cantonal differences.

**Taxable Periods and Deductibility of Taxes.** In 13 of the cantons (indicated in the table on page 120), corporations file their tax returns every two years at the same time as the federal returns, and assessments are raised for the same assessment periods. In the other 12 cantons, tax returns are filed, and assessments are raised annually.

The table also shows that in 13 cantons, cantonal and communal taxes are not deductible in computing cantonal and communal taxes and must be added back to profit for tax purposes. In the other 12 cantons, taxes are deductible.

**Territorial Concept and Intercantonal Double Taxation.** As businesses may be expected to operate in several of the 25 cantons simultaneously, the question of intercantonal double taxation arises. To deal with this problem, the territorial concept for Swiss taxation purposes has been evolved. The need for relief from intercantonal double taxation was envisaged in Article 46(2) of the revised federal constitution of 1874, which stated that federal legislation would make the necessary provisions. In fact, no law has ever been passed, but the Supreme Court has set out some principles:

1. Real estate, and the income derived therefrom, is taxed only in the canton in which it is physically situated.
2. Investments in industrial or commercial enterprises, and the income derived therefrom, are taxed in the cantons in which permanent establishments are situated. This leads to apportionments between cantons

(on the arm's length principle) which are generally accepted, as, for example, when a factory is situated in one canton and a retail branch in another.

3. Property and income to which the above rules do not apply (for example, investments such as stock exchange securities and the income derived therefrom) are taxed in the canton in which the owner or beneficiary is domiciled.

Some cantons treat a change of a corporation's domicile to another canton as a liquidation; that is, the hitherto untaxed provisions and reserves are taxed. In addition, losses cannot usually be carried forward. A change of domicile to a foreign country is always deemed a liquidation. Privileged corporations (holding, domiciliary, or service companies described later in this chapter), or the privileged portion of their income, are not normally taxed on liquidation.

**Computation Bases.** The bases for computing cantonal and communal tax are generally similar to that for the federal defence tax but with several exceptions. Capital gains of business enterprises are normally included in taxable income, except that in most cantons gains from real estate disposals are excluded and are subject to a special real estate gains tax. The disposals are also subject to the real estate transfer tax described later in this chapter.

The treatment of losses also differs between cantons, and no general rule can be given other than that a corporation with continuing losses cannot utilise them by unlimited set-off against future profits.

Nine cantons (Aargau, Appenzell-Innerrhoden, Glarus, Lucerne, Schaffhausen, Schwyz, Obwalden, Uri, and Vaud) apply the same system of loss carryforward as that used for federal defence tax purposes. Another five cantons (Basel-Stadt, Nidwalden, Valais, Zug, and Zurich) achieve similar results by a method particularly designed to meet their one-year computation and assessment bases. Four cantons allow longer set-off periods than the federal system: St. Gallen and Thurgau allow accumulated losses of up to five years, to be deducted from the profit of the sixth year, and Basel-Land up to four years to be deducted in the fifth year. Appenzell-Ausserrhoden allows the average loss of a four-year period to be deducted from the average profit of the following two-year computation period. Geneva, Solothurn, and Ticino allow a loss to be deducted from the profit of the following computation year. Although no carryforward is provided by the tax laws of Bern, Fribourg, and Graubunden, a loss is compensated by profits through averaging the results of a two-year computation period. Neuchatel has no provisions for loss carryforward, and since taxes are computed annually, there is in practice no carryforward.

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Computation, assessment, and loss carryforward periods are summarised in the following table.

**Computation and Assessment Periods for Corporations and Individuals;  
Deductibility of Taxes by Legal Entities; Loss Carryforward Periods**

Type of Tax	Corporations				Individuals (2)	
	Computation Period (Years)	Assessment Period (Years)	Whether Taxes are Deductible Expenses	Loss Carry Forward Periods	Computation Period (Years)	Assessment Period (Years)
Federal defence tax	2	2	Yes	2, 3 (1)	2	2
Cantonal taxes:						
Aargau	2	2	Yes	2, 3 (1)	2	2
Appenzell-Ausserrhoden	2	2	No	4, 5 (1)	2	2
Appenzell-Innerrhoden	2	2	Yes	2, 3 (1)	2	2
Basel-Land	1	1	Yes	4	2	2
Basel-Stadt	1	1	Yes	2	1	1
Bern	2	2	No	1	2	2
Fribourg	2	2	Yes	1	2	2
Geneva	1	1	Yes	1	1	1
Glarus	2	2	Yes	2, 3 (1)	2	2
Graubunden	2	2	No	1	2	2
Lucerne	2	2	Yes	2, 3 (1)	2	2
Neuchatel	1	1	Yes	0	1	1
St. Gallen	1	1	Yes	5	2	2
Schaffhausen	2	2	No	2, 3 (1)	2	2
Schwyz	2	2	Yes	2, 3 (1)	2	2
Solothurn	1	1	No	1	1	1
Thurgau	1	1	No	5	2	2
Ticino	1	1	No	1	2	2
Unterwalden-Nidwalden	1	1	No	3	2	2
Unterwalden-Obwalden	2	2	No	2, 3 (1)	2	2
Uri	2	2	No	2, 3 (1)	2	2
Valais	1	1	No	3	2	2
Vaud	2	2	Yes	2, 3 (1)	2	2
Zug	1	1	No	3	2	2
Zurich	1	1	No	2	1	2

**Notes:**

- Two years, if the loss occurs in an even-numbered year, and three, if the loss occurs in an uneven-numbered year (four and five, respectively, in Appenzell-Ausserrhoden).
- Loss carryforward periods for individuals are summarised on page 129.

**Cantonal Tax Incentives.** No canton offers cash incentives to enterprises in order to induce them to operate in that canton, although some — see Chapter 2 — assist by providing sites or buildings on advantageous terms. However, some cantons may grant tax incentives in the form of accelerated depreciation and five- or ten-year tax holidays, if an enterprise can convince the tax administration concerned that significant benefits will accrue to the canton, usually in terms of numbers of Swiss citizens to be employed.

**Application of Tax Rates.** Each canton applies a different rate of tax, and these rates are subject to various multiples as already described. While

basic rates tend to remain fairly constant, the multiples are periodically revised: in Zurich for example, they are revised every three years.

The computation of tax payable on adjusted net profits is thus complex. In the example that follows, the corporation concerned is assumed to be domiciled in the canton and city of Zurich and to have adjusted profit before tax of SF50,000 and taxable capital and reserves of SF100,000. In Canton Zurich the basic rate of cantonal income tax is one-half of the percentage of taxable profit to taxable capital, at a minimum of 3%, maximum 10%. The rate so arrived at is then increased by a surcharge of 15%. The effective basic rate can thus range from 3.45% to 11.5%. The basic rate of net worth tax in Canton Zurich is a flat 1.5% on taxable capital. To these effective basic rates are applied the multiples for canton, commune, and church.

The tax assessment would be as follows:

## Income Tax

$$\text{Basic rate } \frac{1}{2} \times \frac{50,000 (= \text{taxable profit})}{100,000 (= \text{taxable capital})} \times 100 = \underline{\underline{25.00\%}}$$

but subject to a maximum of 10%. This is then increased by 15% to give an effective basic rate of 11.5%.

Multiples (for 1975-1977):

Canton	1.20
City of Zurich	1.36
Church	<u>0.1143</u> (1977: 0.1144)

$$\underline{\underline{2.6743}} \times 11.5\% = \underline{\underline{30.754\%}}$$

Income tax is thus	<b>SF</b>
30.754% of SF50,000	<b>15,377</b>

## Capital Tax

Basic rate: 1.5% × multiple of 2.6743 = 4.011%	
Capital tax is thus SF100,000 × 4.011% =	<u>401</u>

<b>Total of cantonal, communal, and church taxes</b>	<b><u>15,778</u></b>
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The federal defence tax calculated from the same figures was SF3,130 (page 115). The total tax charge would therefore be SF18,908 — a combined rate of 37.82%.



# Taxation in Switzerland

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## Holding, Domiciliary, and Other Special Companies

**Holding Companies.** The only reduction of federal defence tax available to holding companies is in respect of 'substantial interests' in other companies. For cantonal and communal tax purposes, however, substantial tax reductions may result from the use of holding companies. Two types require comment:

*Pure Holding Companies.* A corporation qualifies as a pure holding company when its sole or main purpose and principal activity consist of owning shares in other corporations, either Swiss or foreign. Most cantons waive the usual tax on income and charge only reduced taxes on net worth. The reduction varies from canton to canton, as illustrated in the table on page 124.

*Mixed Holding Companies.* A mixed holding company is one that owns substantial shareholdings in one or more other corporations (Swiss or foreign), but also carries on its own operations. Most cantons provide some reduction of income tax on mixed holding companies although the tax reduction method may vary. Most commonly, the federal defence tax type of reduction is granted, whereby, provided a certain minimum investment is held (usually a holding of 20% or more of equity share capital or a holding of a value for tax purposes of at least SF2 million), the total tax on profit is reduced roughly in the proportion that the holding income bears to total income. Only a few cantons grant to mixed holding companies any reduction in net worth taxes.

**Domiciliary Companies.** A domiciliary company may be defined as a corporation that does not engage in trade or business within any of the cantons of Switzerland. It has its legal domicile in Switzerland, but as a rule owns no real estate, has no offices or staff, and carries on no business in the country. Usually such a corporation maintains its registered office at the address of the fiduciary company or attorney that also keeps its books and administers its affairs in accordance with instructions received from shareholders abroad.

Although domiciliary companies are subject to federal defence tax on income and net worth without any special relief, they receive favourable tax treatment in most cantons except Zurich, Schaffhausen, Aargau, Bern, and Vaud, as shown in the table on page 124. This treatment is usually given, as for holding companies, by substituting reduced net worth taxes for the ordinary income and net worth taxes.

A few cantons even allow domiciliary companies to have some administrative facilities such as offices and staff without losing their favourable tax treatment.

*Service, Auxiliary, or Mixed Companies.* Several cantons (such as Fribourg, Geneva, Vaud, and Zug) provide for a related type of corporation called a service company. Such companies as a rule perform administrative, financial accounting, or marketing services for affiliates located outside Switzerland. They may have offices and staff. The cantons concerned most commonly exempt from tax all or part of these companies' income attributable to activities abroad or tax it at reduced rates. Such income usually consists of management or technical assistance fees and the like. In several cantons the tax treatment of service companies is a matter of negotiation with the tax authorities, and certain service companies may be taxed, for both cantonal and federal purposes, not on income but on total expenses or wages paid.

Some cantons even give favourable tax treatment to trading corporations provided a predominant part of their incomes (often 80%) derives from foreign sources. Such trading corporations may in addition provide services of the types described in the previous paragraph.

Terminology varies among cantons, and sometimes service companies are called 'auxiliary' or 'mixed' companies.

*Uses of Domiciliary Companies.* The most popular uses of domiciliary and service companies are as international sales or patent holding companies, although they may also offer other opportunities for international tax planning (subject to the 1962 treaty abuse laws).

An international sales company buys goods from affiliated manufacturing entities for sale to third parties in other countries. For European manufacturers this presents no customs duty problems because of the treaties between Switzerland and both the EEC and EFTA groups of countries. The difference between purchase and sale price is accumulated in Switzerland and taxed at only a low rate.

The second main use of domiciliary companies is as patent holding companies. By utilising the extensive network of Swiss double tax agreements, licence fees and royalties can be paid to Switzerland where they will be liable only to federal taxes and cantonal net worth taxes.

The real impact of the 1962 treaty abuse law described on page 137 is on Swiss holding and domiciliary companies. The abuse law attempts to prevent the accumulation of treaty-protected income by persons not entitled to treaty benefits. Each case has to be looked at on its merits, and more detailed discussion of the activities and advantages of privileged corporations is beyond the scope of this book. The following table indicates the tax rates charged and thus the incentives for constructive tax planning that exist.

# Taxation in Switzerland

*Illustration of Combined Tax Rates on Holding and Domiciliary Companies.* The taxpayer is a holding or domiciliary company (corporation) with net profit before tax of SF100,000 and capital and reserves of SF1,000,000 (capital, SF500,000; published reserves, SF250,000; hidden reserves, SF250,000).

The computations are at 1975 rates (the latest published in comparative form) and include communal taxes at the cantonal capital city rates.

Canton	Holding Company			Domiciliary Company		
	Canton and Commune	Federal (1)	Total	Canton and Commune	Federal (2)	Total
	SF	SF	SF	SF	SF	SF
Aargau	600	825	1,425	20,779 (2)	4,774	25,553
Appenzell-Ausser rhoden	1,466	825	2,291	375	6,742	7,117
Appenzell-Inner rhoden (4)	500	825	1,325	—	—	—
Basel-Land	769	825	1,594	1,538	6,609	8,147
Basel-Stadt	1,000	825	1,825	2,000	6,560	8,560
Bern	1,042	825	1,867	8,670 (3)	5,847	14,517
Fribourg	1,300	825	2,125	1,300	6,645	7,945
Geneva	2,838	825	3,663	2,838	6,476	9,314
Glarus	750	825	1,575	375	6,742	7,117
Graubunden	750	825	1,575	375	6,742	7,117
Lucerne	500	825	1,325	700	6,706	7,406
Neuchatel	1,938	825	2,763	1,873	6,573	8,446
St. Gallen	1,026	825	1,851	1,026	6,669	7,695
Schaffhausen	975	825	1,800	23,400 (2)	4,600	28,000
Schwyz	700	825	1,525	700	6,706	7,406
Solothurn	1,000	825	1,825	750	6,706	7,456
Thurgau	618	825	1,443	618	6,718	7,336
Ticino	400	825	1,225	400	6,742	7,142
Unterwalden-Nidwalden	375	825	1,200	1,100	6,657	7,757
Unterwalden-Obwalden	500	825	1,325	500	6,730	7,230
Uri	375	825	1,200	375	6,742	7,117
Valais	712	825	1,537	712	6,706	7,418
Vaud	3,585	825	4,410	8,604 (5)	5,847	14,451
Zug	750	825	1,575	750	6,706	7,456
Zurich	1,605	825	2,430	19,388 (2)	4,869	24,257

Notes:

1. Net worth tax only.
2. Taxed as ordinary companies.
3. Assumption: 10% of net profits are taxable.
4. No provisions for domiciliary companies.
5. Assumption: 20% of net profits are taxable.

It must be realised that other levels of profit and capital can produce very different taxation charges, and this table must be regarded as illustrative only.

**Associations.** An association (*Verein* - Association) is normally founded by individuals for nonbusiness purposes. Usually, therefore, an association is exempt from tax at all levels because it exists for charitable, public benefit, or nonprofit purposes. If it is not tax-exempt, it is in most cases taxed as an individual on its income and net worth for federal defence tax purposes; cantonal and communal treatment varies, but usually an association is taxed as a corporation. An association's membership fees are not considered to be taxable income.

**Foundations.** A foundation (*Stiftung* - Foundation) is generally subject to tax as an association. A major exception is the family foundation, which is permitted for restricted purposes only; treatment varies, but if tax is chargeable, it is computed as for an individual.

**Groups.** There are no provisions in Switzerland whereby losses of one corporation may be set off against profits of another, for either federal or cantonal tax purposes.

**Closely-Held Corporations.** No provisions exist to force closely-held corporations to distribute profits, as for example in Japan or the United Kingdom. In practice, however, where a corporation is controlled by a family, particular attention is paid to the possibility of hidden distributions.

## **DIRECT TAXATION OF INDIVIDUALS — FEDERAL, CANTONAL, AND COMMUNAL**

Individuals resident in Switzerland are liable to the federal defence tax on income (but at present not on net worth), and male citizens are additionally subject to a federal military exemption tax. Residents are also liable to cantonal and communal income and net worth taxes (*Einkommens - und Vermögenssteuern* - *Impôts sur le revenu et la fortune*) and inheritance and gift taxes (*Erbschafts - und Schenkungssteuern* - *Impôts sur les successions et les donations*), but can claim relief for foreign withholding taxes in accordance with double taxation treaties. Nonresidents are also liable to some of these taxes on certain types of Swiss-source income. Resident foreigners can claim special tax status.

### **Residence and Nonresidence**

**Liability to Swiss Taxes.** 'Residence' for Swiss tax purposes depends not only on whether an individual has his real home in Switzerland but also whether he resides there for a protracted period. Individuals not employed

# Taxation in Switzerland

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in Switzerland become liable to Swiss tax only after a certain period of time, usually from three to six months, but persons gainfully employed in the country usually become liable to tax immediately upon arrival.

In some cantons, both federal and cantonal taxes are collected at source from salaries or wages earned by foreigners. Under certain conditions, pay or compensation from Swiss sources is liable to tax in Switzerland even if the recipient is not resident there; in particular, remuneration paid to non-resident members of the management boards of Swiss companies is taxable.

These comments are subject to the provisions of various double taxation treaties.

**Alternative Lump-Sum Basis.** For federal purposes and in certain cantons, resident foreigners not engaged in income-producing activities in Switzerland may elect to be taxed by a lump-sum deduction. This alternative lump-sum tax is based on the higher of income computed from the taxpayer's expenditure or total Swiss income plus income from certain foreign sources. Although the rates are the same as for the normal cantonal taxes, the personal deductions are not given in full when tax is determined in this manner. The lump-sum tax should be computed and compared with the normal tax based on world-wide income and capital. Frequently, the alternative tax based on expenditure will be considerably lower than taxes computed in the normal manner.

**Intercantonal Taxation.** The principles relating to corporations described earlier apply also to individuals. In addition, wages and salaries, old age pensions, and income from personal services are generally taxed in the canton in which the recipient is domiciled, defined for this purpose as the place of his permanent home.

## Federal Defence Tax on Individuals

**Liability to Tax.** Resident individuals, regardless of nationality, are liable to this tax. Nonresident individuals are liable in respect of real estate situated in Switzerland or of any beneficial interest therein or of any debt secured on real property situated in Switzerland (or any beneficial interest in such a debt).

Partnerships are not taxed as such; the appropriate amount of each partner's income is taxable, however.

**Taxable Income.** This comprises income from all sources, such as net business income, director's fees, pensions, and income from employment, real estate, securities, patent and similar rights, and services rendered. From the total of income from these sources may be deducted interest of all kinds payable by the taxpayer, as well as necessary related costs.

Income for federal defence tax purposes does not include capital gains, except on disposals of business assets. The incomes of resident married couples are added together, and the incomes of minor children are added to their parents' income, except that children's earned income is assessed separately. All benefits from an individual's employment are included in his income, whether paid in cash or not.

**Deductions.** Some deductions may be claimed against total income. These are at present as follows:

	SF
1. Expenses in connection with employment (such as travel to and from work, clothing, meals, and training)	Actual (standard allowances if greater)
2. Married persons' allowances (also given to the widowed or divorced)	2,500
3. Child allowance for each child under 18 who is supported by the taxpayer and for each child over 18 who is studying or learning a trade and is supported by the taxpayer	1,200
4. Allowance for each further dependant supported by the taxpayer	1,200
5. Wife's earned income allowance	2,000

In addition, premiums for life or pensions insurance and insurance against sickness or accidents and any interest received from savings may be deducted up to a total of SF2,000 per year. Social security contributions for which the taxpayer is liable are fully deductible.

**Rates of Tax.** Taxable income after these deductions is liable to tax on a graduated scale; there are separate tables for single and married taxpayers. Illustrations of tax for 1976 on selected incomes follow.

# Taxation in Switzerland

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Taxable Income	Single Persons		Married Couples, Widowed and Divorced Persons	
	Tax (SF)	%	Tax (SF)	%
9,700 (1)	22	0.226	—	—
10,200 (2)	28	0.269	22	0.215
15,000	80	0.535	64	0.428
20,000	135	0.676	108	0.541
30,000	421	1.404	360	1.200
50,000	1,461	2.921	1,391	2.781
75,000	3,628	4.837	3,558	4.743
100,000	6,521	6.521	6,451	6.451
200,000	19,721	9.860	19,651	9.825
300,000	32,921	10.973	32,851	10.950
392,900	45,184	11.500 (3)	45,114	11.482

## Notes:

1. Minimum taxable salary for single persons.
2. Minimum taxable salary for married, etc., persons.
3. Higher incomes are taxed at maximum rate of 11.5% (less SF.70 for married, etc., persons).

There is no federal defence tax on an individual's net worth, although a proposal to levy such a tax is to be the subject of a referendum in December.

## Military Service Exemption Tax

The military service exemption tax (*Militärpflichtersatz - Taxe d'exemption du service militaire*) is levied by the federal government on every male Swiss citizen between the ages of 20 and 50 who is exempt from military service for some reason, such as medical grounds or because of temporary absence (less than three years) abroad. The tax is payable annually at a fixed rate of SF15 plus a percentage ranging from 0.4% to 2.4% of taxable income, depending on the age of the taxpayer. The tax is reduced by certain percentages, depending on the number of days during his lifetime that the taxpayer has performed military service.

## Cantonal and Communal Taxes on Individuals

**Income Taxes.** Again, it is impossible within the scope of this business study to describe the great diversity of cantonal and communal income

taxes. Most cantons and communes levy an income tax (*Einkommenssteuer* - *Impôt sur le revenu*), computed in much the same way as the federal defence tax, with many variations in rates and regulations. In addition to taxing the usual forms of income, most cantons tax capital gains arising from sales of real estate at special rates. Certain cantons also tax capital gains arising from sales of securities. (*Kapitalgewinnsteuer* - *Impôt sur les bénéfices en capital*).

Computation and assessment periods are in most cases the same as for federal defence tax and are thus of two years each, starting with an uneven-numbered year. Basel-Stadt, Geneva, Neuchatel, Solothurn, and Zurich have a one-year computation period only. The treatment of losses of sole proprietorships or partnerships is similar to that for legal entities (see page 119), particularly in cantons that have the same computation periods for both types of enterprise. Differences do occur, however, the major one being that losses of sole proprietorships or partnerships will first be offset against the proprietors' income from other sources of the same period, and only the remaining balance will be subject to compensation in the following period (except in Neuchatel where no carryforward is permitted).

**Net Worth Taxes.** The cantons and communes levy tax on the net worth of individuals (*Vermögenssteuer* - *Impôt sur la fortune*). All property, real and personal, tangible and intangible, owned by the individual is subject to net worth tax. Among taxable assets are included cash, securities, cash surrender values of life assurance policies, investments in businesses, and patents and licence rights. Household effects are taxed in some cantons but usually at nominal values only. In most cantons, liabilities of all types are deductible in arriving at taxable net assets. If real or business property is held in more than one canton, each allows as a deduction from the asset value a proportionate part of the taxpayer's liabilities. Generally, intangible property, securities, and the like are considered to be held at the place of the taxpayer's residence.

An example of a personal tax computation follows, showing the relationship of federal, cantonal, communal, and church taxes.

*Example of a Personal Tax Computation Based on the Rules of Canton Zurich.* The taxpayer is a married man with no children. He lives and is employed in the canton and city of Zurich. He is a Protestant. His gross income from employment is SF56,000, and his net worth is SF100,000, assumed to yield income of SF4,000. The example uses 1975 tax rates.



# Taxation in Switzerland

	Federal Taxes		Zurich Cantonal Taxes	
	SF	SF	SF	SF
<b>1. Computation of Taxable Income</b>				
a. Income, comprising salary and income at 4% on net worth of SF100,000		60,000		60,000
Deductions:				
Social security premium (employee's share), deducted from salary of SF56,000	2,520		2,520	
Employment expenses				
Travelling to and from work, meals not taken at home, and other expenses (standard allowance — although in practice often higher by 100%)	1,000		1,500	
Insurance premiums, interest allowance, etc. (maximum)	2,000		2,400	
Social allowance for a married couple	<u>2,500</u>		<u>6,000</u>	
Total deductions		<u>8,020</u>		<u>12,420</u>
Taxable income		<u>51,980</u>		<u>47,580</u>
Income taxable, rounded down to even 100s		<u>51,900</u>		<u>47,500</u>
b. Net worth		At present no federal net worth tax		100,000
Deduction:				
Social allowance for a married couple				<u>100,000</u>
Taxable net worth				<u>Nil</u>
<b>2. Calculation of Tax Payable</b>			<b>SF</b>	<b>SF</b>
Federal defence tax at 4.337%, the rate applicable to a taxable income of SF51,900 (there is at present no federal tax on net worth)				1,516
Cantonal and communal taxes (Canton Zurich)				
Income tax:				
Basic cantonal rate on SF47,500 is 6.052%				
6.052% of SF47,500 = <u>SF2,875</u>				
Multiples:				
Canton	1.20			
City of Zurich	1.36			
Protestant Church, Zurich	<u>0.11</u>			
	<u>2.67</u>			
2.67 × SF2,875			7,676	
Personal tax, Zurich (a negligible tax not mentioned further in this chapter)			12	
Net worth tax: 0.1% on net worth of nil			<u>0</u>	
<b>Total taxes payable, federal and cantonal</b>				<u>7,688</u>
				<u>9,204</u>

A comparison between the effective tax rates on individuals in the various cantons is given below.

*Illustration of Personal Tax Rates in the Various Cantons.* The taxpayer is a married individual without children, employed, with an earned income of SF56,000 and a net worth of SF100,000, assumed to yield income of SF4,000 (total income, therefore, SF60,000). Computations are at 1975 rates, the latest published in comparative form, and indicate communal taxes at the cantonal capital city rates.

	SF	%
Federal defence tax	1,516	2.53
Canton		
Aargau	9,410	15.68
Appenzell-Ausserrhoden	10,105	16.84
Appenzell-Innerrhoden	8,439	14.07
Basel-Land	8,620	14.37
Basel-Stadt	10,409	17.35
Bern	10,376	17.29
Fribourg	10,495	17.49
Geneva	9,851	16.42
Glarus	10,031	16.72
Graubunden	8,684	14.47
Lucerne	10,159	16.93
Neuchatel	10,012	16.69
St. Gallen	10,520	17.53
Schaffhausen	10,980	18.30
Schwyz	9,609	16.02
Solothurn	9,775	16.29
Thurgau	10,582	17.68
Ticino	10,000	16.67
Unterwalden-Nidwalden	7,941	13.23
Unterwalden-Obwalden	8,732	14.55
Uri	7,694	12.82
Valais	12,201	20.34
Vaud	10,404	17.34
Zug	8,033	13.39
Zurich	7,688	12.81

While cantonal and communal tax burdens vary considerably, in all cases they are much heavier than federal tax. As with the other cantonal comparative tables given in this chapter, it is important to remember that different levels of income and net worth can produce very different cantonal tax charges, and the figures quoted above must be regarded as illustrative only.

**Taxation of Real Estate Gains.** All cantons levy a tax (*Grundstückgewinnsteuer - Impôt sur les gains immobiliers*) on real estate

# Taxation in Switzerland

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gains, whether or not they tax other capital gains. Almost invariably these gains are subject to a separate tax (except in Solothurn, where they are taxed with income, but are subject to an extra tax of up to 10% on the gains). Once more, there is a great variety in detail, but the taxable gain is generally taken to be the difference between the selling price and the cost price including the cost of additions. Effective tax rates vary greatly and are predominantly influenced by the amount of the gain, the location of the real estate, and the length of time the seller has held the property. For example, a gain of SF100,000 may be taxed as follows:

Period of Ownership	Rates Applicable %
Less than 1 year	from 15 to 52
5 years	from 12 to 41
20 years	from 0 to 25

Often the communes levy surcharges on the cantonal taxes, and representative surcharges are included in the rates shown above.

Real estate gains are not subject to federal taxation unless the property sold was part of the assets of a business enterprise.

*Inheritance and Gift Taxes (Erbschafts-und Schenkungssteuern - Impôts sur les successions et les donations).* In most cantons, inheritances and gifts are taxable on the recipient. Rates are usually progressive and vary according to the amount received, the degree of kinship, and in a few cantons, according to the recipient's own fortune. As a rule, a certain amount is tax-free; in some cantons amounts inherited by the surviving spouse or by descendants in direct line are fully exempt. Two cantons (Neuchatel and Solothurn) also levy a tax on the estates of deceased persons at moderate rates, while in Graubunden this estate tax takes the place of the inheritance tax. Two other cantons (Schwyz and Obwalden) do not tax inheritances or gifts at all. In Valais, inheritances by spouses and direct descendants are exempt from tax. Some cantons have allowed their communes to raise further taxes on gifts and inheritances. In Lucerne and Solothurn, although inheritances are taxed, gifts are not.

Compared with some other countries, the tax rates are modest. On an inheritance by a direct descendant (for example, a child) of SF500,000, the tax is from nil to 5.6%, depending on the canton. The same inheritance would be taxed from 19% (Aargau) to about 56% (Glarus) if received by a nonrelated person. Generally speaking, the taxation of gifts follows the same rules as for inheritances.

## FEDERAL ANTICIPATORY OR WITHHOLDING TAX

### Dividends

The federal anticipatory or withholding tax (*Verrechnungssteuer - Impôt anticipé*) is levied at 35% on all distributions by Swiss resident corporations, including dividends, liquidation payments in excess of paid-in capital, distributions paid out of capital appreciation, and hidden profit distributions such as excessive intercompany fees or royalties. The tax is charged on all recipients, individuals as well as corporations, residents and nonresidents, and is withheld by the paying corporation.

For a taxpayer resident in Switzerland, this tax is normally equivalent to an advance payment of his cantonal and communal taxes and may be credited subsequently against his liability to such taxes; he may even receive a refund if the anticipatory tax withheld exceeds his cantonal and communal tax liability.

A nonresident recipient is subject to anticipatory tax, whether or not he is also subject to other taxes, although relief may be due under the terms of a double taxation agreement. Examples of the reductions in anticipatory tax rates and the conditions as to share ownership, etc., that apply under selected agreements are given on page 136.

### Interest

The anticipatory tax is levied only on interest paid by resident debtors on corporate bonds and bank deposits. It is not levied, therefore, on interest on intercompany accounts or simple loans. As for dividends, relief may be available to a nonresident recipient under a double taxation agreement.

### Branch Profits

No withholding or remittance tax is charged on profits of a Swiss branch of a foreign corporation at the federal, cantonal, or communal level.

### Service and Technical Assistance Fees

No withholding tax is deductible from such items. However, if the fees are paid to an affiliate, any excessive amount could be treated on examination by the authorities as a hidden distribution.

### Royalties

Royalties are not liable to withholding tax unless, under certain circumstances, they are considered to represent hidden distributions.

# Taxation in Switzerland

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## Insurance Policies

To ensure that Swiss residents declare the proceeds of insurance policies for income and net worth tax purposes, all insurance companies doing business in Switzerland must inform the federal tax authorities of all annuities, pensions, and surrender values paid to resident taxpayers. If a recipient of any such payment requests the insurance company in writing not to do this, the company must withhold tax at 15% on any annuity or pension or at 8% on any other payment. The recipient can later request a refund of this withheld tax from the federal tax administration or its credit against his total tax liability.

## Hidden Distributions

Reference is made earlier in this chapter to 'hidden distributions,' sometimes called 'constructive dividends.' The Federal Court has ruled that these arise when:

1. The recipient receives a benefit without giving reasonable consideration in return, resulting in the paying corporation suffering a decrease in value.
2. The recipient is a shareholder or a member of the company, or an affiliate of a shareholder, and the benefit would not have been made available to an outsider dealing at arm's length.
3. The corporation is aware of the disparity between the benefits provided and the consideration given.

There is thus a subjective element in the decision as to whether a payment or part of a payment constitutes a hidden distribution.

If a hidden distribution is deemed to have been made, it will be disallowed as an expense for federal defence and cantonal and communal income taxes and will be subjected to the anticipatory tax.

## DOUBLE TAXATION AGREEMENTS

Most general or comprehensive double taxation agreements negotiated by Switzerland relating to income and capital gains have followed the draft model published by the Organisation for Economic Cooperation and Development in 1963. Agreements have been concluded as follows:

## General Agreements

These exist with:

Austria	Ireland	South Africa
Canada	Japan	Spain
Denmark	Malaysia	Sweden
Finland	Netherlands	Trinidad and Tobago
France	Norway	United Kingdom
Germany (Federal Republic)	Pakistan	United States of America
Hungary	Portugal	
	-Singapore	

The text of a general agreement with Italy has been signed, but the agreement has not yet been ratified. The next agreement to be concluded will probably be one with Jamaica.

Negotiations for further agreements are in progress with Australia, Belgium, Brazil, Greece, India, Indonesia, Kenya, New Zealand, the Philippines, South Korea, and Tunisia.

Negotiations for the revision of agreements in force with Ireland and the United Kingdom have commenced.

The present agreement with the United Kingdom has been extended to Anguilla, Antigua, Barbados, Belize, Dominica, Falkland Islands, Fiji, Gambia, Grenada, Malawi, Montserrat, Nevis, Rhodesia, St. Christopher, St. Lucia, St. Vincent, Seychelles, and Zambia.

## Shipping and Air Transport Agreements

These exist with:

Algeria (1)	Egypt (1)	Morocco
Argentina	Ghana	Nigeria
Belgium	Greece	Poland
Brazil	India (1)	Romania
Bulgaria	Iran (1)	Tunisia
Canada	Israel (1)	Uruguay
China (People's Republic) (1)	Italy	USSR
Czechoslovakia (1)	Kenya (1)	Yugoslavia
	Lebanon	Zaire (2)

### Notes:

1. Air transport only.
2. Extended to Burundi and Rwanda.

# Taxation in Switzerland

## Reduced Rates of Swiss Anticipatory or Withholding Tax Under Double Taxation Agreements with Selected Countries

Most Swiss general tax treaties provide for reduced rates of withholding taxes on dividends and interest. Some of these reduced rates are listed in the following table:

Recipient's Country of Residence	Dividends	Bond and Bank Interest	Mortgage Interest
	%	%	%
Austria	5	5	5
Denmark	Nil	Nil	Nil
France	5 (1)	10	10
Germany (Federal Republic)	15 (2)	Nil (2)	Nil
Ireland	10 (3)	Nil	Nil
Japan	15 (4)	10 (5)	10 (5) (6)
Netherlands	15 (3)	5	5 (7)
Norway	5	5	5 (7)
South Africa	7½	10 (8)	10 (8) (6)
Spain	15 (4)	10	10
Sweden	5	5	5
United Kingdom	15 (9)	Nil	Nil (6)
United States of America	15 (10)	5 (11)	5 (6)

- Notes:**
1. 15% when the recipient is a French corporation with participation in the Swiss corporation of at least 20%, if the recipient is predominantly controlled by persons not resident in France and the shares of neither corporation are quoted on the stock market or traded over-the-counter.
  2. No relief for profit-sharing bonds.
  3. Nil, when 25% or more of the voting shares of the Swiss corporation is held, provided that not more than 25% of the Swiss corporation's gross income is derived from dividends and interest other than from its own subsidiaries.
  4. 10% when 25% or more of the voting shares of the Swiss corporation is held, with proviso as in number 3 above.
  5. Nil on interest from claims by the Japanese import-export bank or from claims guaranteed or indirectly financed or insured by the Japanese government or that bank.
  6. Taxes on wealth are not covered by the treaty and thus can be levied without limitation.
  7. Withholding taxes up to 5% of the gross interest are permissible, but not assessed taxes.
  8. No relief if the South African recipient does not suffer tax in South Africa.
  9. 5% when 25% or more of the voting shares of the Swiss corporation is held, with proviso as in number 3 above.
  10. 5% when 95% or more of the voting shares of the Swiss corporation is held, with proviso as in number 3 above.
  11. Special relief: refund to the extent that the withholding tax cannot be credited against the USA tax.

## **Relief from Foreign Taxes Available to Swiss Taxpayers**

The foregoing table deals with Swiss taxes on payments made from Switzerland to foreign countries. Relief from foreign taxes on payments made to Switzerland from foreign countries may also be available under double taxation treaties, described earlier in this section. Frequently the respective rates of tax are reduced to the same percentages as are quoted above, but there are very many exceptions or conditions to be noted; these are not set out here as they are beyond the scope of this business study.

## **The Treaty Abuse Decree of 1962**

During the 1950s, it became apparent that more and more companies were taking advantage of the benefits of relatively low Swiss corporate and individual tax rates and the extensive network of Swiss double taxation agreements by setting up companies in Switzerland, particularly holding and domiciliary companies. Individuals were also taking advantage of the low tax rates. Other developed nations became increasingly concerned about this trend, and because the resultant pressures meant that double taxation treaties might be revoked — which would be harmful to Swiss investors — the Swiss government issued a decree on December 14, 1962, designed to limit some of the 'treaty abuses' that had developed.

The decree is concerned only with relief from foreign taxes withheld at source under double taxation agreements and not with Swiss taxes levied by assessment. It distinguishes two types of 'unjustified claim':

1. One that is obviously unjustified because the conditions in the relevant agreement, such as bona fide residence in Switzerland or beneficial ownership, are not met. This has resulted in a considerable tightening of the rules for claims for treaty relief.
2. One that is considered by the tax authorities to be 'abusive.' This only applies to Swiss corporations that receive treaty-favoured income and that are controlled by nonresidents of Switzerland. In determining whether a claim to treaty relief is abusive or not, the tax authorities will apply tests such as:
  - a. Interest-bearing loans provided by nonresidents to the Swiss corporation may not be more than six times its equity capital.
  - b. The rate of interest on loans may not exceed rates generally applicable to the Swiss market situation. The federal tax administration periodically publishes the maximum rate applicable; at present this is 7%.
  - c. Not more than 50% of income received benefiting from a double tax agreement may be paid to nonresidents in the form of expenses such as royalties or interest or charged as depreciation.



# Taxation in Switzerland

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- d. A company materially controlled by nonresidents must pay out as dividends at least 25% of income benefiting from the use of treaties.

Other tests beyond the scope of this section to describe may be applied.

If the Swiss tax authorities consider that these conditions are not being met, they can refuse to approve applications for reductions in rates of foreign withholding taxes (or for refunds of overpaid tax), and they are authorised to collect on behalf of the foreign country concerned any withholding taxes improperly reduced. As a last resort, the other treaty country may be notified of the situation. The Swiss taxpayer or other person suspected of taking improper advantage of the double taxation treaty must be notified in writing and then has 30 days in which to contest the tax authorities' decision.

**Special Clauses in Double Taxation Agreements.** Even after the 1962 decree, some of Switzerland's treaty partners felt that the restrictions were still insufficient. Therefore some of the new general Swiss double taxation agreements, and in particular those with Germany and France, contain unique features exceeding the treaty abuse decree provisions. For example, to claim relief from withholding tax, the relevant income must be subjected to cantonal and communal income taxes as well as federal tax.

**Foreign Antiavoidance Legislation.** The international pressures that resulted in the 1962 decree have also meant that some other countries have passed antiavoidance legislation designed to negate the Swiss tax benefits. Examples of such legislation are the German 'Aussensteuergesetz' law and the 'sub-part F' legislation in the United States. Care should therefore be taken not only to ensure that the Swiss tax treatment of a Swiss corporation or particular transaction is satisfactory but also that there are no harmful tax effects in other countries.

**A Note on Campione.** Campione d'Italia is a small Italian town on the shore of Lake Lugano entirely surrounded by Swiss territory. It is mentioned here because foreigners sometimes think it is part of Switzerland, as Swiss currency, customs, and banking laws apply there, and its residents may pass freely into and out of Swiss territory. Campione has special tax rules within the framework of Italian tax law. Swiss tax laws — and in particular double taxation agreements — do not apply there.

## FEDERAL STAMP DUTIES AND OTHER TAXES

The federal government levies the following stamp duties (*Eidgenössischestempelabgaben - Droits de timbre fédéraux*). The rates shown are subject to challenge by referendum.

### Stamp Duty on Capital Issues

This tax is levied whenever shares are issued. It is charged at 3% on the amount for which the securities are issued, or their face value if greater. Premiums on shares are thus taxable, and if subscription for shares is made in kind (that is, by contributing assets such as shares or real estate) actual market value of these assets is taken as the amount on which the duty is charged.

Under a 1973 law, no stamp duty is charged on the issue of bonds (debentures) or foreign securities, with certain exceptions principally concerning cantonal authorities and public bonds. This law replaced a system dating back to 1917 where a multiplicity of rates was charged.

### Stamp Duty on Transfers of Securities

A transactions tax (*Umsatzabgabe - Droit de timbre de négociation*) is charged at 0.15% on the sale price of Swiss securities; on sales of foreign securities the rate is 0.3%. Tax is payable when a transaction is completed and is borne equally by the two contracting parties. This tax is also payable on the face value of bills of exchange if one of the contracting parties is a professional securities dealer. It is not payable if the purchaser is a bank.

### Tax on Insurance Premiums

Insurance companies are charged a tax on third-party liability, automobile comprehensive, and nonlife insurance premiums paid. The rates are 1.25% for liability and comprehensive insurance premiums and 5% for others.

### Tax on Allowances and Rebates

This tax is levied on all legal entities and other businesses in Switzerland that grant allowances and rebates to customers. It was originally designed to tax the watchmaking industry which traditionally gave such otherwise nontaxable allowances. The rate is 3.3% on that part of any allowance or rebate in excess of 5.5% of the original sales price of the goods. This is collected annually together with federal defence tax.

# Taxation in Switzerland

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## CANTONAL AND COMMUNAL WITHHOLDING AND OTHER TAXES

Because there are 25 different cantonal tax systems, there are many miscellaneous taxes, ranging from servant and bicycle taxes to real estate transfer taxes. Only the more important of these are mentioned here.

### Wages Withholding Tax

This withholding tax is charged as a final Swiss tax on the earned income of foreign workers employed in Switzerland. A similar tax is charged on income from certain functions deemed to have been performed in Switzerland by foreign residents — for example, the fees of foreign management board members. This tax is subject to any relevant double taxation agreement.

### Real Estate Taxes

Some cantons and communes levy an annual tax (*Liegenschaftssteuer - Impôt immobilier*) on the owners of real estate. These taxes date back to medieval times and are quite separate from net wealth and capital taxes. In many cases they are applied at communal level only. Rates vary, but as an example, in Geneva legal entities are charged at 0.2% and individuals at 0.1%, with reductions for agricultural land.

### Real Estate Transfer Taxes

In 20 cantons, taxes are charged on real estate transfers either at cantonal or communal level or sometimes at both. Generally this tax (*Handänderungssteuer - Droit de mutation*) is paid by the purchaser or transferee of the property, although the transferor is jointly liable for payment. Almost all transfers are liable, but those to government authorities, or by way of gift or inheritance within a family, are usually exempt. The rates vary widely from 0.1% in Appenzell-Innerrhoden to 4.0% in certain circumstances in Neuchatel. Generally the rate averages about 1.0%.

### Land Register Fees

In the five cantons that do not levy real estate transfer tax, a fee (*Stempelsteuer auf Urkunden - Droit d'enregistrement*) is imposed whenever a transfer is inscribed in the real estate title register. The cantons concerned are Aargau (0.35%), Glarus (0.3%-0.5%), Schaffhausen (0.7%), Uri (0.1%-0.2%), and Valais (0.6%-1.4%). Valais has a fixed fee combined with a stamp duty varying with the value of the property.

### Stamp Duties

Ten cantons (Aargau, Basel-Stadt, Fribourg, Geneva, Lucerne, Neuchatel, Ticino, Uri, Valais, and Vaud) levy stamp duties on documents and similar

legal instruments. These vary widely in scope and amount and are only applied at cantonal level. The amounts charged depend, in some cases, on the size of the paper and the number of sheets involved, in other cases on the amounts involved, and in others on the nature of the document. These duties are not a major source of revenue.

## Miscellaneous Taxes

Among other miscellaneous taxes are those on:

- Registration of certain acts and documents (Fribourg and Geneva)
- Advertising billboards (ten cantons)
- Dogs (all cantons, although in most cases rescue dogs are exempt)
- Entertainment — theatres, movie cinemas, and the like (all cantons except Aargau and Obwalden)
- Tourists (in the tourist cantons)

## FEDERAL INDIRECT TAXATION

### Federal Sales Tax

Switzerland has not yet adopted the system of turnover taxes now prevailing throughout the EEC on 'value added,' although the introduction of a value added tax (VAT) has been proposed.

The present tax on sales (*Warenumsatzsteuer - Impôt sur les chiffres d'affaires*) is charged when goods pass to a retailer or an ultimate consumer and is quite distinct from the customs duties dealt with in Chapter 3.

The federal sales tax applies not only in Switzerland but also in neighbouring Liechtenstein, where it is administered by the Swiss authorities on behalf of the Liechtenstein government.

**Basis.** Sales tax is a single-stage tax imposed on the first delivery of goods by registered traders in Switzerland or Liechtenstein to nonregistered traders or to ultimate consumers or on the appropriation of goods by registered traders for their own use. This means that any wholesaler who delivers goods within the country is liable for sales tax.

A wholesaler is any person who:

1. Sells goods in Switzerland or Liechtenstein in the course of his business for more than SF35,000 per year (or appropriates them for his own use), if more than 50% of his turnover results from deliveries to retailers, or if his sales are of used goods (such as second-hand automobiles) such sales exceed SF35,000 per year.

# Taxation in Switzerland

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2. Manufactures or produces goods and sells them in Switzerland and Liechtenstein for more than SF35,000 per year (or appropriates them for his own use).
3. Voluntarily registers as a wholesaler, as is possible in certain circumstances.

The wholesaler himself can purchase goods from manufacturers or other wholesalers free of tax (provided they are not meant for his own consumption), which means that he does not have to finance any tax element in the cost of his inventories.

**Rates.** The tax rate is 8.4% if the goods are being transferred to other traders such as retailers for resale or are imported by a person not registered as a wholesaler for sales tax purposes. The rate is reduced to 4.2% for supplies associated with real estate and to 5.6% in all other cases. Tax is charged on the sale price, less insurance and transportation expenses if shown separately on the invoice. The sale price may also be reduced by rebates, allowances, and discounts.

**Mechanics.** The wholesaler must register with the tax authorities and account to them for all his sales. Tax is collected on the basis of quarterly statements of sales which the wholesaler must submit within 30 days after the end of each quarter. Depending on the nature of the business and its accounting arrangements, two different procedures can be followed in defining taxable turnover:

1. On invoices issued
2. On cash collected

The taxpayer is obliged to maintain his accounting records in such a way that any information required by the tax authorities can be clearly ascertained.

**Imports.** Sales tax on imports is collected together with customs duties. Goods imported are subject to sales tax even if the importation takes place without monetary consideration passing.

**Exceptions.** Exports are not subject to sales tax, nor are domestic sales of food, books, periodicals, fuel and power, and other essential commodities. Furthermore, real estate sales and the performance of services are not taxable.

## **Proposed Value Added Tax**

Proposals have been made from time to time for the introduction of a value added tax to replace the present sales tax. VAT, if introduced, would be charged on sales of services as well as goods, and the standard rate of tax would probably be 8%.

PART TWO

liechtenstein





## CHAPTER IX

# Liechtenstein in Brief

- THE COUNTRY, PEOPLE, AND GOVERNMENT
- INVESTMENT FACTORS
- LABOUR CONDITIONS
- INFORMATION FOR VISITORS
- ACCOUNTING AND AUDITING

There is a story of a lady being driven through Europe who bent down to pick up her handbag from the floor of the automobile and missed Liechtenstein. Liechtenstein is very small; about the only big thing in it is the Prince's private art collection, said to be the world's largest. Nonetheless, it has significant advantages to offer the foreign investor worth noting, and despite government threats from time to time to change its laws, it remains one of Europe's chief tax havens. Its corporation and trust laws are extremely flexible and can be used in a variety of ways.

The Principality of Liechtenstein (*Fürstentum Liechtenstein*) has a customs and currency union with Switzerland, and the tariff laws, exchange controls, and regulations concerning foreign nationals described in Part One of this Business Study apply also in Liechtenstein. Part Two is therefore primarily concerned with business entities and taxation.

### THE COUNTRY, PEOPLE, AND GOVERNMENT

#### The Country

Liechtenstein lies next to the Swiss cantons of St. Gallen and Graubünden, squeezed between the east bank of the upper Rhine and the mountains of Austrian Vorarlberg. It is about 25 kilometres (16 miles) long and 8 kilometres (5 miles) wide. In the west the Rhine plain contains the capital, Vaduz, and most of the villages and factory sites, while in the east forests and mountains rise toward the Austrian frontier. The forests not only add much to the country's natural beauty but offer protection against avalanches and erosion of the soft limestone rock. The climate is much the same as that of northern Switzerland.

#### The People

The population is about 23,000, a third of whom are foreigners — mostly Swiss and Austrian. Liechtensteiners are German-speaking, although many businessmen can speak other languages, notably English and French. They are almost entirely Roman Catholic, but religious freedom is established by the constitution. Education and social services are well-organised, and the country is politically stable. The labour force comprises



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over half the population, principal activities being light industry and agriculture in the Rhine valley and forestry, stock farming, and vine-growing on the hillsides.

## History

In medieval times the Count of Vaduz in the south of what is now the principality and the Count of Schellenberg in the north held their lands as fiefs of the Holy Roman Emperor. In 1696 and 1712 the wealthy Austrian prince Johann Adam of Liechtenstein-Nikolsburg purchased the two counties, and in 1719 they were joined as an independent principality within the Empire, named after the prince. After Napoleon's downfall in 1815, the country became a member of the German Confederation, but later turned to Austria for customs, tax, and diplomatic services. As the ruling princes began to identify themselves more with their little country and to spend much of their personal fortunes on its affairs, the first signs of prosperity appeared in improvements in farming and in the establishment of light industry.

After World War I and the defeat of Austria, Liechtenstein had to protect its independence in new ways, and in 1921 and 1923 currency, postal, diplomatic, and customs unions with Switzerland were signed. These unions have been the basis for the country's prosperity ever since, and the Swiss links saved Liechtenstein from absorption into Hitler's Reich in 1938. Since World War II, industrial exports, tourism, and the inflow of funds attracted by the country's favourable investment climate have been major factors in Liechtenstein's rapid development. The present sovereign, His Serene Highness the Ruling Prince Franz Josef II, who came to the throne in 1938, has done much to guide and help his country and is greatly respected by his people. Despite the close connections with Switzerland, 260 times larger than its tiny neighbour, Liechtensteiners are jealous of their independence and stress that their laws are those of a separate sovereign state. Liechtenstein is represented abroad by Switzerland's diplomatic representatives.

## Government

The present constitution dates from 1921. A diet or parliament (*Landtag*) is elected for four-year periods by proportional representation, women and foreigners being barred from voting. The government consists of a head and four councillors, appointed by the Prince with the approval of parliament. There are referendum and initiative rules as in Switzerland. In the 1974 elections the Progressive Citizens' Party (*Fortschrittliche Bürgerpartei*), which had been in power from 1928 to 1970, obtained a narrow majority over the Patriotic Union Party (*Vaterländische Union*). The latter

party in its early days had been responsible for the 1921 constitution and the country's alignment with Switzerland, but today the policies of both parties are generally similar.

The Personal and Corporate Law (*Personen-und Gesellschaftsrecht* or *PGR*) of 1926, as extended in 1928, is a codification of Liechtenstein's main civil and commercial regulations. Real property law is based on Swiss law, and parts of the old Austrian Civil Law Code (*Allgemeines Bürgerliches Gesetzbuch*), as it existed before 1914, are valid in Liechtenstein. As Swiss laws are passed that are binding in the principality, they must be published in the Liechtenstein Official Gazette without delay. Liechtenstein can only conclude customs or trade treaties with other states together with Switzerland, and most Swiss trade and allied agreements with other countries are binding on it. In particular, a special protocol to the European Free Trade Area (EFTA) treaty brought Liechtenstein into that association. The principality may conclude other types of treaty with foreign states, but wisely has refrained from antagonising the Swiss.

Vaduz and the villages of the principality are grouped into eleven communes for local government matters.

Judges are nominated by the Prince on the proposal of the parliament. Civil courts have several levels: justices of the peace, county court (*Landgericht*), the appeal court (*Obergericht*), and the supreme court (*Oberster Gerichtshof*).

## **The Economy**

There is virtually no unemployment, and wages and living standards are high. The cost of living is much the same as in Switzerland, although real estate tends to be more expensive. Industry is well-established, most products being sophisticated goods for which transport costs are low, so that the majority are exported. Exports have risen ten times over the last 20 years. Switzerland, other EFTA countries, and the EEC are its main customers. Ceramics, precision instruments, textiles, foodstuffs, optical lenses, leather goods, pharmaceuticals, and specialist machinery are among the products manufactured. In recent years metalworking and food processing have expanded while textile production has declined. Hydro-electric power is produced, but some electricity has to be imported from Switzerland. Agriculture is efficient but of declining importance. Some good wines are produced, notably the fairly dry Vaduzer. The tourist industry has also grown rapidly in recent years.

# Liechtenstein in Brief

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Taxes account for over one-third of state revenues, and other important sources are customs duties, the salt monopoly, and the sale of postage stamps to collectors all over the world. Expenditure is largely on education, social welfare, and civil engineering schemes — roads, bridges, Rhine control, and protection against avalanches. Nothing has to be spent on defence or on money-losing operations such as the railway, which is run by the Austrians.

Because of the favourable tax treatment offered to companies registered in Liechtenstein but conducting their business abroad, over 20,000 holding companies have their addresses in the principality. While the influx of foreign capital has aided the country's development, it has contributed to the rise in prices, notably of real estate, and periodic warnings are given that foreign-owned entities registered in Liechtenstein must be prepared to contribute more to the national economy.

## INVESTMENT FACTORS

### Investment Incentives

It has not been necessary in the past for the government to offer any tangible investment incentives to industrial enterprises, although tourist facilities have sometimes been encouraged. Intangible incentives include the country's central position in Europe and its suitability as a headquarters for operating units in both the EEC and EFTA groupings. Other attractions are strong currency, sound economic and political conditions, hardworking labour force, helpful government officials, and, above all, the liberal business and tax laws described in Chapters 10 and 11.

### Currency and Exchange Controls

The official currency is the Swiss franc, and Swiss exchange controls apply in the country, thus restricting deposits made for noncommercial reasons. Foreign businessmen must not overlook any exchange controls operating in their own countries.

### Banking and Related Facilities

Three banks operate in the principality: the Liechtensteinische Landesbank, the Bank in Liechtenstein, and the Verwaltungs-und Privatbank. The first acts as the country's central bank, but all three offer the usual range of banking services, including the provision of credit as appropriate. While the Liechtenstein banks are not subject to Swiss banking laws, they are in close contact with their Swiss counterparts and in general operate the

same interest rates and money market practices. In particular, a law of 1960 introduced the Swiss concept of strict secrecy in the keeping of bank accounts.

The banks and other professional offices are able to deal with all the requirements of international clients. Almost all enterprises are members of the Chamber of Industry (*Industrie-kammer*), a body which can often be of assistance to prospective investors.

There are no requirements as to methods of financing business entities, but holding companies are normally expected not to exceed a loan-to-equity leverage or gearing of six or seven to one.

## **Trade and Business Regulations**

**Foreign Trade.** Swiss tariffs and customs procedures described in Chapter 3 apply in Liechtenstein.

**Patents and Trademarks.** By the customs treaty with Switzerland, laws and practices regarding patents, trademarks, and copyrights are common in both countries. Applications for registration should be made to the Office for Intellectual Property (*Amt für Geistiges Eigentum*) in Vaduz.

## **LABOUR CONDITIONS**

### **General**

In Liechtenstein people work hard, and this has been an important factor in the growing prosperity of the country. Wage and salary levels are broadly similar to those in Switzerland. Trade unions are recognised. Education is compulsory and subject to state control, although the secondary schools are private; some Swiss facilities are used. Labour laws deal with hygiene, working conditions, and employment contracts; among other things, these laws forbid work on Sundays and public holidays.

Social security covers old age pensions, disability and unemployment insurance, and family allowances, with much the same benefits as in Switzerland. Unemployment insurance is compulsory for all employees, including foreign nationals, but not for the self-employed. Benefits are based on a proportion of last earnings. In addition, there is a health insurance scheme (outside the state system) covering most of the population that pays almost all medical and hospital charges and half salary or wages for up to a year. Old age insurance is compulsory for all between 20 and 65

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living or working in the country; benefits are similar to those in Switzerland, with which there are reciprocal arrangements. The cost of social security and fringe benefits may, as in Switzerland, add around 25%-30% to an employer's basic payroll costs. A foreigner working in Liechtenstein — and his employer — will wish to ensure that adequate long-term insurance is maintained for him, because unless there is a reciprocal agreement with the country concerned, no insurance contributions are repaid when a foreign worker returns home.

## **Labour Permits**

Like many European countries, Liechtenstein has a labour shortage in normal times, met by employing foreign workers.

Two 1963 agreements with Switzerland provide that Swiss regulations regarding the movement and control of foreigners described in Chapter 4 apply also to Liechtenstein. These two agreements would automatically cease if the customs union were ever to be disbanded.

The first agreement provides that nationals of each country when in the other shall receive equal treatment with the other's own citizens, although remaining subject to registration requirements. However, it is not possible for foreigners to evade Swiss work permit restrictions by using Liechtenstein's easier naturalisation laws. Naturalisation in Liechtenstein can be obtained after five years' residence there if the commune concerned is prepared to agree and also if the parliament is willing to consent. The second agreement provides that foreigners are subject to Swiss laws on entry, exit, residence, and settlement, and refusal of entry by Switzerland is binding also in Liechtenstein. Foreigners may not hold residence and work permits simultaneously in both countries; these documents are valid only in the issuing state.

## **INFORMATION FOR VISITORS**

### **Travel and Communications**

Passport and visa requirements are the same as for Switzerland. The best air approach is through Zurich. The main railway line from Paris through Zurich to Vienna crosses the principality, but expresses do not stop there. The frontier stations are at Sargans and Buchs in Switzerland, from either of which it is but a short road journey to Vaduz. The main Switzerland-Austria highway also crosses the country, and internal roads are good, making transportation easy. There are many hotels, but they all become very busy in the summer and winter tourist seasons.

Post, cable, and telephone services are good, and direct dialling to much of the world is possible. The Swiss post code applies: Vaduz is FL 9490.

## **Hours and Holidays**

Liechtenstein, like Switzerland, uses Western Continental European time. Time is not advanced during summer months.

Public holidays are mostly associated with Roman Catholic Church festivals, Assumption Day (August 15) and the Prince's birthday (August 16) being the most noteworthy.

## **ACCOUNTING AND AUDITING**

### **Form of Financial Statements**

Legal requirements are few. Balance sheets and income statements must be complete, clear, and true and must give the surest possible insight into the economic situation of the enterprise; they must be expressed in the German language. Current assets and liabilities must be shown separately from other balance sheet figures, and contingent liabilities or assets must be stated in notes attached. There is neither a professional accounting body nor a stock exchange to give guidance on accounting standards, and despite the theoretical requirements, in general, Liechtenstein financial statements do not provide much information.

### **Publication**

Financial statements must be prepared for proprietors as explained in Chapter 10, but the only rule about general publication is that any corporation (*Aktiengesellschaft*) with a capital exceeding SF1 million or any entity issuing unsecured bearer bonds may be requested by the government to publish its annual financial statements. Even this mild provision does not apply to family-owned corporations or to those operating wholly in other countries (domiciliary companies), and as a result very few financial statements are available to the public.

### **Accounting Principles**

Asset valuations must be made in accordance with normal commercial practice, although this is nowhere defined. Subject to this comment, inventories are generally stated at the lower of cost or net realisable value (or replacement cost if realisable value cannot be ascertained); fixed assets are stated at cost with depreciation either deducted, credited to a sinking fund, or provided by the creation of a replacement fund; and investments are carried at cost or lower market or estimated value during the preced-

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ing month. Contingent liabilities and assets are disclosed by note. Current assets and liabilities in foreign currencies are converted at the highest and lowest rates respectively during the preceding month, but long-term items are converted so as to spread exchange profits or losses over the whole period concerned.

## **Auditors**

One or more auditors are required by law for corporations with 20 or more members or which do not restrict the transfer of their shares. Because domiciliary and holding companies rarely have more than 20 members, they are in practice exempt from this requirement. There is no legal necessity to appoint auditors in other cases, although the constitution documents of an anstalt or a foundation (Chapter 10) sometimes provide for them. Auditors are not required to be professionally qualified accountants, and any person whether a member of the enterprise concerned or not may be appointed as long as he is not one of its managers or employees. Consequently, auditors and their examinations do not have the same status as their equivalents in countries with highly developed auditing professions. There is no standard form of audit report.

Where an auditor is required, his initial appointment cannot be for more than one year, but thereafter he is usually appointed for periods of three years. The auditor is appointed by the shareholders or other ultimately responsible body, who may also dismiss him, even during the period for which he has been appointed. In addition to inspecting the books to see that assets, liabilities, and results have been presented in accordance therewith, the auditor is empowered to represent the corporation in any transactions with its own managers.

It is possible that audit requirements may be extended in the future.

## **Books and Records**

Every enterprise which is registered in the Commercial Registry in Vaduz (that is, business entities of all kinds including domiciliary and holding companies) must keep business books and prepare annual inventories and balance sheets. The books of a holding or domiciliary company need not be kept in Swiss francs or in the German language. The only legal requirements are that the books must be appropriate and kept in an orderly way in accordance with usual business principles and that books, vouchers, and correspondence must be preserved for ten years.



- SUMMARY OF FORMS
- REGULATIONS APPLYING TO ALL LEGAL FORMS
- THE AG CORPORATION
- THE ANSTALT
- THE STIFTUNG OR FOUNDATION
- THE TREUUNTERNEHMEN OR TRUST UNDERTAKING
- THE GmbH COMPANY

Liechtenstein's liberal commercial laws have induced many foreign enterprises and individuals to establish business entities in the principality. The economic advantages of organising an entity in Liechtenstein are described in Chapter 9, and taxation factors are dealt with in Chapter 11. This chapter describes the simplicity and low cost of setting up a business entity there.

What is not so simple is the variety of forms available — more than 20 — in addition to the forms of any foreign country, which with only minor amendments to bring them into line with Liechtenstein law can be recognised as properly constituted enterprises in the principality. This chapter first lists the main forms of Liechtenstein entity and then summarises the regulations applying to those forms generally used by foreign investors. It is difficult to compare one form with another; the choice of form depends on each investor's needs and objectives.

In October 1977 the government stated that it was prepared to consider measures to remedy certain abuses that had arisen from the present liberal laws, although no firm proposals had been made when this Business Study was being prepared.

## SUMMARY OF FORMS

### Legal Entities

These include not only corporate bodies as generally known in other countries but also entities such as anstalts and foundations not usually met elsewhere.

**Corporation** (*Aktiengesellschaft* — referred to in this chapter for brevity as an AG). This is the normal form of stock corporation known in other countries: members' liability is limited, shares can be transferred easily, and capital of all kinds can be freely raised. It is the form usually adopted by independent investors whose relationships need to be formally defined.



# Forms of Business Entities

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**Limited Liability Company** (*Gesellschaft mit beschränkter Haftung* — referred to in this chapter as a GmbH). This is the form of incorporated company widely used throughout Europe to give limited liability protection to a small group of associates. Members are referred to as participants rather than shareholders, and transfers of their interests are restricted. It is not often used by foreign investors because members' names must be filed in the Commercial Register.

**Anstalt.** The English translation of this word is 'establishment,' but because that word has a special meaning in tax law, the German word 'anstalt' is used wherever possible in this chapter. This is a Liechtenstein entity, without a counterpart in other countries, that is frequently used by foreign businesses and individuals. It can be set up by one or more founders but does not usually have members or transferable shares as corporations and companies do. The founders act through managers and decide who shall be entitled to net profits and distributions on liquidation. Its liability is limited to its own assets. It is particularly suitable for wholly-owned operations, although there is a possibility that it may not be recognised as a legal entity in some other countries.

**Foundation** (*Stiftung*). This form is similar to the trust found in some other countries. It is a very flexible entity used principally by individuals for family or charitable purposes, but it may be used by businesses to administer funds for employees' benefits or at present even for commercial operations. One or more founders allocate assets to the foundation, which is managed by administrators or trustees for the benefit of named beneficiaries. Again, its liability is limited to its own assets.

**Limited Partnership With Share Capital** (*Kommanditaktiengesellschaft*). This is a combination of partnership and corporation where one or more general partners have unlimited liability and manage the business, while further capital is contributed by limited partners whose interests are represented by transferable shares.

**Joint Interest Company** (*Anteilsgesellschaft*) and **Registered Co-operative Society** (*eingetragener Genossenschaft*). These are two forms of corporate body with limited liability but without share capital that are suitable for associates with common interests, such as members of trade unions or agricultural cooperatives, although they are not limited by law to such activities. They are rarely used by foreign investors for commercial purposes.

**Association or Society** (*Verein*). This is a legal form of business entity not met in other countries whereby limited liability is obtained by a group

of associates. Associates can be admitted at any time and can leave at any calendar year-end provided they have given one quarter's notice of their intention. This form does not have share capital but can raise finance through membership fees. Members act through an executive committee, and the association's rules must be set out in its statutes or articles of association. It is not often used for commercial purposes.

**Other Legal Entities.** Other legal entities include mutual assurance and friendly societies, public utility corporations, group undertakings, certain trusts (see below), and special associations of various kinds.

## **Entities Without Legal Personality**

These include partnerships, collectives, one-man businesses with limited liability, and trust undertakings.

**Partnerships.** There are various partnership forms: the general partnership (*Kollektivgesellschaft*) usual in other countries, where all partners are jointly and severally liable for the firm's debts; the limited partnership (*Kommanditgesellschaft*), where one or more partners have liability limited to the capital they have subscribed, but where they may not participate in management; the silent partnership (*stille Gesellschaft*), in which an investor may lend money to a colleague in exchange for a share of the profits; and a joint venture or contractual agreement for a common purpose, known as a simple partnership (*einfache Gesellschaft*).

**Trusts.** This form (*Treuhanderschaft*) can be used to keep private the name of the settlor, as the property of the trust is held and administered in the name of the trustee(s). For commercial activities a variation called a 'trust undertaking' (*Treuunternehmen*) can operate in its own name managed by trustees. Like an anstalt, it is suitable for an activity with one owner. It is very flexible and may be used at present for commercial purposes or to administer private fortunes. In practice, the choice between an anstalt and a treuunternehmen depends on the investor's personal preference.

**Branches.** It is also possible to establish a branch of a foreign enterprise.

## **Holding and Domiciliary Companies**

These are not further entities but are tax law terms describing the activities of certain of the entities listed above. Holding and domiciliary companies have the substantial tax advantages described in Chapter 11. They must be legal entities and may be, for example, corporations, limited liability companies, anstalts, foundations, or trust undertakings with legal personality.

# Forms of Business Entities

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A holding company (*Holdinggesellschaft*) is one whose purpose is exclusively or mainly the administration of property or holdings in other business entities, while a domiciliary company (*Sitzgesellschaft*) is one which has only its registered address in Liechtenstein and does not carry on any commercial activity there, although it may maintain an office and even employ full-time staff. Neither form may now own real estate in Liechtenstein.

## REGULATIONS APPLYING TO ALL LEGAL FORMS

### Formation

Any of the legal entities listed above may be formed within a few days by filing the appropriate constitution document at the Commercial Registry in Vaduz together with evidence that capital has been paid in. The complete operation can be carried out by a Liechtenstein agent acting on behalf of the founders, who need not therefore be present.

Formation costs consist of an incorporation stamp duty of 2% of capital (lower in some instances), commercial register fees of SF500 plus SF150 per SF100,000 of capital over the first SF100,000, and the notary's and any other necessary professional fees. In a very straightforward case where no legal or accountancy services are required, total incorporation costs of a Liechtenstein entity could be about SF3,000 for an AG and SF2,600 for the other forms including the usual type of anstalt.

### Name

The name of the entity must not duplicate or be capable of confusion with that of any existing body and must indicate its legal form — that is, the name must state whether the entity is a corporation, anstalt, trust undertaking, or other form. An individual's name may be included only if he is a member or expressly gives his consent. National designations are not permitted nor are names acting merely as advertisements, although such words as 'European,' 'American,' or 'Asiatic' may be allowed. If a name is registered in more than one language, the versions must correspond. Abbreviations referring to the legal form of an entity are not allowed by the Personal and Corporate Law, and the references in this chapter and the next to 'AGs' and 'GmbHs' are made for simplicity only and are not meant to indicate that legal names may contain abbreviations.

### Objects and Management

The constitution documents must define the objects of the enterprise, and the law allows these objects to be quite general. An entity's domicile or registered address may be anywhere in Liechtenstein. Every enterprise

must have a legal representative resident in the principality in order to receive notices, maintain books and records, and deal with the authorities. This representative, who can be an individual or a legal entity, may bind the enterprise only to the extent of powers specifically conferred upon him. Representatives who practice as such professionally must be approved and recognised by law. There are no rules about the number, nationality, residence, or (where appropriate) shareholding of members of the management board, except that at least one member must be an individual resident in the country — often the resident legal representative just mentioned. Every board member must file with the Commercial Register a confirmation of his acceptance of appointment and his specimen signature, both confirmed by a notary. Management boards of all types of legal entity may vote in writing, so that board meetings need be held only if requested by one or more members.

It is possible to include almost any regulation in the entity's constitution document, as long as it is within the law. Powers to sign on behalf of the entity must be defined in its constitution document and filed in the Commercial Register, and the method of publishing notices to members and others must also be defined. The notices and Commercial Registry entries of entities trading in Liechtenstein must be in German, but domiciliary companies may use other languages.

Financial statements must be prepared by all entities once every year. All legal entities must maintain a legal reserve as described later in this chapter. Audit requirements are set out in Chapter 9 and at present are mainly limited to corporations trading in Liechtenstein.

## **Anonymity of Ownership**

The true owners of a Liechtenstein enterprise can usually remain anonymous. This is because anstalts and trusts can be registered by the Liechtenstein representative concerned in his own or trustees' names and after filing in the Commercial Registry can confirm the owners' legal rights by means of a document called a declaration of endorsement, while the owners of corporations can achieve anonymity through the issue of bearer shares after initial registration by a Liechtenstein representative.

## **Costs of Maintaining an Enterprise Registered in Liechtenstein**

Recurring fees payable if the entity does not trade in Liechtenstein comprise an annual corporate capital tax of 0.1% on capital and reserves (minimum tax, SF1,000), described in more detail in the next chapter, and professional costs for legal representation and directors' fees (a minimum of SF2,000-3,000 per year). Entities whose capital is divided into shares

# Forms of Business Entities

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must also pay a coupon tax of 4% on dividends paid. There are thus slight savings in choosing the anstalt or treuunternehmen as the vehicle for a holding or domiciliary company compared with a corporation or other form with a share capital.

If the entity trades in the principality or holds real estate there, other taxes will be payable (see Chapter 11), and administration expenses will be incurred.

## THE AG CORPORATION

The Liechtenstein corporation (*Aktiengesellschaft*) is broadly similar to its Swiss counterpart described in Chapter 6, and therefore only the major differences from Swiss corporations and other special points of interest to foreign investors are set out here.

### Formation and Share Capital Rules

Formation is usually by the simultaneous method, the founders having registered the documents required (as in Switzerland) at the Commercial Register in Vaduz. Corporations carrying on business in Liechtenstein must additionally announce their registration in the Official Gazette. Unlike Switzerland, and allowing the utmost flexibility, shares in a Liechtenstein AG may be issued with and without a par value, both classes existing alongside each other. Moreover, the shares without par value may be issued at different prices, and any of the shares may be in registered or bearer form. The transfer of registered shares always requires the corporation's consent. Bearer shares may be issued with a minimum of 50% paid up, although this may not be advisable in practice, and registered shares with a minimum of 20% paid up. Until fully paid, the amount actually paid is shown on each share certificate. It is also possible for corporations with variable capital to be formed, but these may only issue registered shares.

Share capital may be subscribed in Swiss francs or any other convertible currency. Twenty percent of the subscribed capital, with a minimum of SF50,000 or its equivalent in any convertible currency, must be paid in unconditionally on formation. If capital is subscribed in cash, proof must be submitted to the Commercial Register that this has been deposited in a Liechtenstein or Swiss bank. A corporation must use its capital for the realisation of its objects, and any surplus capital could be lent back to its shareholders after formation only if adequate security were given and arm's length conditions applied; otherwise, in the event of subsequent bankruptcy, the founders and directors might be personally liable for its debts.

## Shareholders and Meetings

A corporation is not required by law to have a minimum number of shareholders, but there must always be as many as are required to form the management board as defined in the corporation's articles of association (*Statuten*). As the management board can consist of one person, individual or corporate, in practice there need be only one founder or shareholder. If the articles require a larger board but the actual number of shareholders is less, the court has power to dissolve the corporation.

Shareholders in a Liechtenstein corporation have ultimate power to control its affairs, and supervisory boards or workers' councils as known in some other countries are not required by Liechtenstein law.

There is no legal requirement that shareholders' meetings be held in Liechtenstein. Quorums for meetings are usually 10% of all votes, in person or by proxy. Each share normally carries one vote. Changes in the articles of association usually require the consent of 75% of the votes, representing 50% or in some cases 66⅔% of the whole capital. One week's notice of meeting must be given, unless all members are represented and none objects.

## Legal Reserve

Every corporation must establish a legal reserve, to which 5% of the net profit must be transferred each year until the reserve equals 10% of share capital. If shares have been issued at a discount, further annual 5% allocations to the legal reserve are required until the whole of the discount has been provided.

## THE ANSTALT

The anstalt is a legal entity not known in other countries, and is sometimes described as a body halfway between a company and a private trust. It may be formed for commercial or any other purposes, has liability limited to its own assets, and needs only one founder, who may be of any nationality. It need have no members — indeed, if it has members and shares it must comply with the rules governing corporations and coupon tax would be payable, so that the advantages of the anstalt form would be lost. As there are usually no members, share certificates are not issued. Those entitled to benefits from the anstalt (that is, shares of profit and distribution of assets on dissolution) must be defined either individually or by class in its constitution documents or statutes and are called 'beneficiaries.' Although a management board must be appointed, the founder

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or his successor normally retains ultimate control and may dismiss the board or alter the statutes at any time, just as if he were the sole shareholder of a corporation with bearer shares. The anstalt is therefore a very suitable form in which to set up a wholly-owned Liechtenstein holding or even possibly domiciliary company.

The statutes of an anstalt must be in writing, signed by the founder, and must contain:

1. Its name, which must include the word 'Anstalt' or the equivalent in French (*Etablissement*) or English (*Establishment*), and its registered address in Liechtenstein.
2. Its objects and duration if fixed.
3. Its capital, including a valuation in the case of assets contributed other than in cash. (Capital may be fixed or variable.)
4. If appropriate, provisions for convening meetings and passing resolutions.
5. Provisions regarding the management board, auditors (not compulsory), and the way in which the anstalt is to be represented.
6. Rules for the preparation of balance sheets, the appropriation of net profits, and the entitlement of beneficiaries to the anstalt's assets.
7. The way in which official notices concerning the anstalt are to be published.

The anstalt is formed by registering its statutes in the Commercial Register. Other information to be registered comprises the names and addresses of the management board members, their signed consents to act, and the entitlement of the beneficiaries to the anstalt's funds. Proof must also be submitted that at least half the capital has been paid in to a Swiss or Liechtenstein bank, and a declaration must be made as to how the remainder is to be raised. Provided that the anstalt's capital is not divisible into shares, the minimum amount to be paid in is SF30,000 or any convertible currency equivalent, but if shares are issued the minimum amount to be paid in becomes SF50,000.

## THE STIFTUNG OR FOUNDATION

A foundation is usually created to provide benefits for family members, for charitable purposes, or to hold the assets of a pension or welfare fund or investments in commercial enterprises. This entity can also be used at

present for commercial activities, in which case its charter and other information must be registered in the Commercial Register. Other foundations need only deposit their charters in a Foundation Register and need not file particulars for disclosure to the public.

A foundation may be formed by one or more individuals or corporate bodies, of any nationality, who set aside the foundation's property by a charter (sometimes called 'articles') to which the founders' signatures are notarially authenticated. The foundation's assets are completely separate from the founder's own funds and do not form part of his estate at his death. Moreover, benefits due from a family foundation cannot be seized by the creditors of a bankrupt beneficiary. The charter must state the foundation's name and registered address, objects, and administrators or trustees. The charter — or bylaws that may be kept more private in the case of family foundations — must also state the methods of appointing administrators and how the foundation's income and assets are to be dealt with. A foundation thus has no 'owner'; the founder merely constitutes it and thereafter, in his capacity as founder, has no further rights or powers. If as sometimes happens he is appointed to the board of administrators, he is vested with the normal powers of a board member. Usually the beneficiaries of a foundation are designated in the bylaws rather than in the charter, because the bylaws do not have to be registered or deposited in either the Commercial Register or the Foundation Register.

The minimum capital of a foundation is SF30,000 or the equivalent, and the foundation's liabilities are limited to its own assets.

## **THE TREUUNTERNEHMEN OR TRUST UNDERTAKING**

This entity is an enterprise managed by one or more trustees in their own names in accordance with a trust deed. It may be used at present for any of the activities of a corporation or a foundation. While a simple trust undertaking does not have its own legal status, a much more widespread version known as a 'business trust undertaking' is a legal entity separate from its founders and trustees.

The trust undertaking is formed by the execution of a settlement deed and supporting articles (or private bylaws in some cases), which must state the name, registered address, duration and objects of the undertaking, the amount of the trust fund and the assets representing it, the number and method of appointment of trustees, and the ways in which official notices concerning the trust undertaking are to be published. The Personal and Corporate Law applies only if the settlement deed does not contain contrary provisions, and it is therefore important that deeds should specifically state what provisions of the law are amended or excluded.



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The minimum size of a trust fund — that is, its capital — is SF30,000 or its equivalent. Commercial undertakings must always be registered in the Commercial Register, to which must be submitted, besides the trust deed and articles, the names, addresses, and occupations of the trustees and a declaration of authorisation to sign on behalf of the undertaking. Trustees may be individuals or corporate bodies of any nationality. The only rule about names is that a business trust undertaking (the legal entity) must include in its title the words 'registered trust' (*Registriertes Treuunternehmen*) or similar words.

The trustees must administer the trust's assets for its beneficiaries, among whom may be the settlor unless he is also the sole trustee.

As in the case of foundations and most *anstalts*, there are no members of a trust undertaking, only beneficiaries who are entitled to its income or capital. If one group of beneficiaries is entitled to the trust undertaking's income but another group to its assets on dissolution, income and capital transactions must be carefully segregated. Normally all costs, including those of formation and dissolution, are payable out of income. The founder or settlor can usually decide on dissolution without the consent of either the board of trustees or the beneficiaries, and can thus retain ultimate control while limiting his liability to the assets of the trust. This form of entity is another that can suitably act as a holding company or owner of real estate, as well as for private or charitable purposes, although in practice the *anstalt* form is usually preferred.

The trust undertaking must not be confused with the straightforward trust. Liechtenstein is the only country in Continental Europe that has adopted the Anglo-American concept of a trust whereby trustees hold property quite independently of the settlor and beneficiaries.

## THE GmbH COMPANY

This form has not been widely used in the past although it corresponds to similar entities in most Continental European countries. Once again, much of the information given about GmbH companies in Chapter 6 applies in Liechtenstein, but there are differences from Swiss practice, mainly concerning members' or participants' rights.

Participations must be in multiples of SF50, each normally carrying one vote, although they need not be of the same size. Minimum capital to be paid in is SF50,000 or its equivalent, but there is no maximum capital. Cash subscribed must be paid into a Liechtenstein or Swiss bank, as in

the case of other business entities. Although liability is limited, the articles may provide for additional capital contributions by participants in some circumstances. Participants can direct the company themselves or appoint and dismiss a manager or managers to act for them; they retain ultimate power like the shareholders of a corporation. The company must have a resident representative like all other entities, and one of its managers must be a Liechtenstein resident. Holders of 10% of the participations may call general meetings, and usually a simple majority suffices to pass a resolution, but in order to amend the articles of association or to dissolve the company, 75% of all participants holding 75% of the capital must approve. Changes in participants' rights or liabilities require the consent of all participants. The company may acquire its own participations, if these are fully paid, out of reserves.

One disadvantage of the limited liability company form may be that the names of participants must be filed in the Commercial Register. The law does not prevent participants using nominees, but in practice this could cause problems and is not normally recommended.



# CHAPTER XI Taxation in Liechtenstein

- INTRODUCTION
- CORPORATE TAXATION
- PERSONAL TAXATION
- OTHER TAXES
- LIECHTENSTEIN AS A TAX HAVEN

## INTRODUCTION

Surprisingly to some people, Liechtenstein is not a tax-free haven. Taxes are levied on corporations doing business in Liechtenstein; their nature and rates are described first in this chapter. The special Liechtenstein entities described in Chapter 10 are taxed at much lower rates, provided they are properly organised, and their taxation is discussed next, followed by taxation of individuals. Finally, an attempt is made to evaluate Liechtenstein as a tax haven.

Tax law is contained in the National and Local Taxation Act of January 30, 1961. This is supplemented by annual Finance Acts, in which the applicable rates of tax are fixed. The principal taxes are:

National Taxes (*Landessteuern*)

Corporate income tax (*Ertragssteuer*)

Corporate capital tax (*Kapitalsteuer*)

Coupon tax (*Couponsteuer*)

Real estate profits tax (*Grundstückgewinnsteuer*)

Income tax on individuals (*Erwerbssteuer*)

Property tax (*Vermögenssteuer*)

Estate, inheritance, and gift taxes (*Nachlaß-, Erbanfall-und Schenkungssteuern*)

Communal Taxes (*Gemeindesteuern*)

Communal supplements on national property and income taxes

## CORPORATE TAXATION

### Corporate Income Tax

**Tax Base.** Corporate income tax (*Ertragssteuern*) is levied on most worldwide income, net of normal business expenses, of any of the resident

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entities described in Chapter 10. These are referred to in this chapter as 'corporations,' unless the context requires otherwise. A resident entity is defined for tax purposes as one that has its registered address in Liechtenstein.

**Computation of Income.** Taxable income includes patent royalties, dividends, and interest received, net of foreign taxes suffered. Income attributable to permanent establishments abroad is, in general, not exempted (page 174).

Taxable profit is determined from the books of the enterprise maintained in accordance with normal accounting rules, adjusted as necessary for expenses not deductible for tax purposes. Two major factors that influence taxable income are discussed below.

*Dividends.* A dividend received from another corporation, whether resident or nonresident, is subject to tax, even though dividends paid are not deductible in computing corporate income tax liability.

There is no general exemption from tax on dividends received from associated companies, but as explained later, holding and domiciliary companies are exempted from tax on dividend income.

*Inventories.* Goods held for resale are valued at the lower of cost and net realisable value, determined by the method most applicable to the type of business concerned.

As in Switzerland, up to one-third of the year-end inventory value may be written off for tax purposes provided a detailed record of inventory is available for review by the tax authorities. If inventory values decrease, previous write-offs will be recaptured.

**Allowable Deductions.** Deductible business expenses include royalties and interest paid. The tax treatment of major expenses is discussed below.

*Interest.* Generally, interest paid on loan capital in excess of six times the equity of the corporation is disallowed for tax purposes, but in certain circumstances a higher debt-equity ratio may be negotiated with the tax authorities. In the case of financial institutions, however, interest expense on borrowings lent on to others is always deductible, but the tax authorities normally expect a profit turn of at least 0.5% on such on-lending.

If interest is paid to shareholders at a rate in excess of a normal commercial rate, the excess is disallowed.

*Depreciation.* Both the straight line and declining balance depreciation methods are permitted, although the former is generally used.

The rate of depreciation is based on the useful working life of the asset. Examples of the officially published guidelines for depreciation rates using the declining balance method are:

	%
Factory buildings	5
Office buildings (including banks)	2
Office furniture	20-25
Equipment and machinery	30-35
Motor vehicles	35
Tools of any kind	50

If the straight line method is used, the acceptable rates are one-half of these.

When an asset is sold or scrapped before it is fully depreciated for tax purposes, the difference between the sale proceeds and the tax written-down value is treated as an item of ordinary income or expense.

Accelerated depreciation may be claimed only in exceptional circumstances when the taxpayer can demonstrate that the asset concerned has a limited life.

*Investment Allowances.* Liechtenstein makes no provision for investment grants or allowances.

*Taxes.* Taxes on income and capital (except coupon tax) are deductible in the year in which they are paid. Foreign taxes and indirect taxes are also deductible.

*Transactions with Related Persons.* Payments to affiliates, whether Liechtenstein or foreign, are deductible provided they reflect a fair arm's-length price for the goods or services provided.

*Other Expenses.* Reasonable travel and entertainment expenses and business gifts are deductible, as are royalties, repairs and maintenance costs, and reasonable pension provisions. Specific provisions for doubtful accounts are deductible, and so are general provisions, subject to a maximum of 10% (domestic receivables) and 15% (foreign receivables).

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*Goodwill.* Goodwill may be capitalised only if it was originally acquired for value. It is normally written off in equal instalments over five years, but where it has a determined life (e.g., deriving from rights granted for a ten-year period), it may be written off over such life.

*Nondeductible Expenses.* The principal nondeductible expenses are payments to shareholders of salaries, pensions, interest, and the like in excess of fair arm's-length rates.

**Capital Gains.** Capital gains by corporations, other than gains on real estate transactions that are taxed separately (discussed later in this chapter), are liable to normal corporate income tax.

**Losses.** A loss may be carried forward and set against the profits of the two years following the year in which it was incurred, but cannot be carried back for set-off against profits of previous years.

**Branches of Foreign Corporations.** A foreign corporation deemed in Liechtenstein tax law to have a Liechtenstein permanent establishment is taxable on the income received or produced by its Liechtenstein establishment. A permanent establishment in Liechtenstein law includes a place of management, branch office, factory, plant, or workshop, and a building or construction project if its duration or the duration of several connected projects carried out in the same commune exceeds (or is likely to exceed) six months. For simplicity, 'permanent establishments' are referred to hereafter as 'branches.'

Liechtenstein branch profits subject to corporation tax are computed similarly to those of a resident corporation. The same corporation tax rate is applied, but the ratio of profits to capital and reserves may be calculated from an allocation to the branch of the whole corporation's profits and equity, as agreed upon with the local tax authorities.

*Profit Remittances by Branches of Foreign Corporations.* A branch of a foreign corporation will be treated for Liechtenstein tax purposes as if it were a Liechtenstein registered entity. It will generally be treated as the equivalent of a corporation with an issued share capital, and in this case remittances of profit will be regarded as dividends and subjected to the 4% coupon tax described later. However, a branch may be treated as any kind of entity, even as an individual, depending on the particular case.

**Corporate Tax Rates.** Corporate income tax rates are progressive with a minimum tax payable of 7½% and a maximum of 15%. The rate applicable to a corporation is equal to half of the percentage that its net taxable

profit bears to its taxable capital and reserves, within the maximum-minimum range.

For example, assume that a corporation has a capital of SF100,000, reserves of SF200,000, and profits for the year of SF60,000. The ratio of profits of SF60,000 to capital and reserves of SF300,000 is 20%. One half of 20% is 10%, which falls between 7½% and 15%. Therefore the rate of tax which will be charged on the corporation's profits of SF60,000 is 10%.

A surcharge is levied on the corporate income tax payable where dividends distributed exceed 8% of the taxable capital and reserves. The surcharge increases the corporate income tax rates between 1% and 5% as follows:

Dividends as % of Capital		Surcharge (%)
Exceeding	Not Exceeding	
8	10	1.0
10	12	1.5
12	14	2.0
14	16	2.5
16	18	3.0
18	20	3.5
20	22	4.0
22	24	4.5
24		5.0

Thus, using the above example, if the corporation declares a dividend of SF30,000 out of the year's profits, a surcharge of 1% is applicable because this dividend of SF30,000 amounts to 10% of capital and reserves. The total tax liability would then be 11% of SF60,000.

## Returns, Assessments, and Payments

**Returns.** A tax declaration must be presented to the Tax Administration (*Steuerverwaltung*) not later than six months after the end of the financial year — usually therefore by July 1. Applications may be made for extension of time for filing.

**Assessments.** Following the filing of the tax return, an assessment is issued by the Tax Administration to income tax and capital tax. The assessment is based on the taxable profits of the previous accounting year, but if the taxpayer fails to file a return within the prescribed time limit, an estimated assessment, at least 20% higher than that based on the previous year, will be issued. If the taxpayer does not agree with the assessment, based on his filed return, an appeal can be made to the Tax Commission (*Landessteuer Kommission*). If further appeal is necessary, the

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Supreme Court finally decides. Appeal is allowed against estimated assessment resulting from the taxpayer's failure to meet filing deadlines.

**Payments of Tax.** The corporate income tax and capital tax liabilities are due for payment on receipt of the tax assessment from the Tax Administration. After one month, interest at 5% per annum, payable in arrear, becomes due. As mentioned below, however, where reduced capital tax is assessed, the tax must be paid one year in advance.

## Corporate Capital Tax

This tax (*Kapitalsteuer*) is levied on the capital and reserves of a corporation at its year-end, excluding the profit for the year and any new capital invested during the year. Tax is levied at 0.2% with no minimum amount.

Holding and domiciliary companies (other than foundations) pay capital tax at 0.1%, subject to a minimum annual tax of SF1,000.

In the case of a foundation (*Stiftung*), however, the tax rate is reduced to 0.075% where the capital and reserves exceed SF2 million and to 0.05% where they exceed SF10 million, again with an annual minimum tax of SF1,000.

Entities paying the reduced rate of capital tax must pay the tax one year in advance.

## Coupon Tax

Coupon tax (*Couponsteuer*) at the rate of 4% is withheld on all payments of dividends, interest, and similar payments or credits by resident corporations (including holding and domiciliary companies organised as corporations) to resident and nonresident shareholders and associates. Coupon tax is not payable, however, on profit distributions where capital is not divided into shares or participations, as in the case of trusts, foundations, or most anstalts.

Interest paid on the following loans is exempt from coupon tax:

1. Interest paid on loans with a duration of less than two years where the principal amount of the loan is less than SF50,000.
2. Interest paid on all loans secured on real property.
3. Interest on bank accounts in which money has been deposited for less than 12 months.



The payer of the dividend or other taxable payment is obliged to pay over the tax as soon as the coupon or taxable payment is due.

The tax is withheld on the amount for which the coupon is redeemed or on the amount of the taxable payment, whether paid in cash or credited to some account, and the person making the taxable payment is responsible for reporting and paying the tax withheld to the tax authorities. It is a final tax on payments to Liechtenstein individuals and to nonresidents whether individuals or corporate entities. A Liechtenstein corporate entity may treat coupon tax as an expense in computing its taxable income.

## **Real Estate Profits Tax**

A corporation or individual disposing of real estate located in Liechtenstein must pay real estate profits tax (*Grundstückgewinnsteuer*) on any gain. The taxable gain is the amount by which the proceeds of sale exceed the original purchase price plus any capital expenditure incurred (or, if higher, the official value of the property at the time of sale). Proceeds of sale include all payments made by the new owner in whatever form.

Damage to the real estate suffered by the taxpayer during the last ten years can be deducted from the gain on sale to the extent that it is not covered by insurance claims. From the remaining gain a deduction of SF1,500 is made; the balance forms the taxable profit. The tax rate for both corporations and individuals is 1.4% (70% of 2%), subject to a surcharge that depends on how long the vendor has owned the property concerned, decreasing from 100% to nil after ten years of ownership. The tax thus calculated, including the surcharge as applicable, is then increased by a further surcharge calculated in the same way as for property tax purposes (discussed later in this chapter), plus a special surcharge of 200% on the total that takes the place of the communal surcharge described later.

Real estate profits tax is levied on holding and domiciliary companies, however organised, as well as entities trading in Liechtenstein.

## **Taxation of Special Liechtenstein Entities**

**Entities Receiving Income From Liechtenstein.** *Anstalts, Foundations, and Trust Undertakings.* These are described in Chapter 10. Anstalts, foundations, and trust undertakings that carry on activities within Liechtenstein are liable to pay taxes on profits from all activities and capital just like corporations and limited liability companies. There is no exception to this rule, and the tax rates already described also apply to these entities. Coupon tax is not payable, however, by foundations or trust undertakings

# Taxation in Liechtenstein

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or by an anstalt unless it is exceptionally organised so that its capital is divided into shares.

The corporate capital tax is normally levied at rates of 0.2% of capital and reserves.

*Donation Tax on Formation of a Foundation.* Real estate and securities settled on foundations are treated as donations, and the donor is liable to donation tax (*Schenkungsteuer*). This applies only if the donor is resident in Liechtenstein. Settlements made for the public benefit having no profit-making objectives are exempt from donation tax. The basic rates of tax range from 0.5% to 18%. The rate broadly depends upon the amount of the property settled and the degree of relationship between the donor and the beneficiaries. A surcharge has to be paid when the settlement exceeds SF20,000 per beneficiary.

**Entities Receiving Income From Outside Liechtenstein.** *Liechtenstein Trading Corporations.* Income earned from a permanent establishment or immoveable property abroad is not generally exempt from corporate income tax in Liechtenstein. Patent royalties, dividends, and interest received from abroad are taxable on the amount received net of any foreign taxes suffered. The net worth represented by these sources is normally included in the tax base for corporate capital tax.

*Holding and Domiciliary Companies.* These two categories are granted special tax status in Liechtenstein. They may be organised in any of the legal forms described in Chapter 10.

Holding companies (*Holdinggesellschaften*) are exempt from corporate income tax and are subject to corporate capital tax at a special rate of 0.1% on capital and reserves, with a minimum tax of SF1,000 annually.

Should a holding company engage in trading activities in Liechtenstein as a secondary (but not a primary) activity, holding company status for tax purposes is not lost. Corporate income tax and capital tax are levied on that part of its profits which is attributable to its Liechtenstein trading income at rates applicable to normal Liechtenstein corporations.

Unlike holding companies, domiciliary companies (*Sitzgesellschaften*) are not permitted to engage in any trade or business activity within Liechtenstein. Domiciliary companies are exempt from corporate income tax, but like holding companies are liable for corporate capital tax at 0.1% (minimum, SF1,000) annually. Holding and domiciliary companies may maintain rented offices in Liechtenstein without prejudicing their beneficial tax status.

*Foreign Tax Credit.* No credit is given for foreign taxes paid against any Liechtenstein tax liability arising. Foreign tax is, however, allowed as a deductible expense.

## **PERSONAL TAXATION**

### **Residents**

Individuals resident in Liechtenstein are liable to income and other taxes in a manner generally similar to individuals in the cantons of Switzerland. There is a basic income tax rate of 2% and a basic property tax rate of 0.1%. Parliament usually fixes each year the tax to be applied to these basic rates to arrive at the effective rate for that year. This multiple is currently 70%, which means that the effective tax rate on income is 1.4% (70% of 2%) and on net assets, 0.07%. Surcharges are also levied which may range from 5% to 325% of the normal rates when the basic taxes levied reach various levels.

In addition to the national taxes, communal surcharges are levied as described later.

The total effect of the multiples and surcharges is that the maximum tax rates in Liechtenstein are now 17.85% on income and 0.89% on capital, including communal taxes.

### **Allowable Income Tax Deductions and Reliefs**

A deduction is allowed for expenses incurred in obtaining income, at a flat rate of SF1,000. If extraordinary expenses in excess of this flat rate can be proved, the excess can be deducted within certain limits. Relief is allowed against employment income for social security payments but not for interest expense incurred on loans for the purchase of a house or apartment. Deductions are allowed for insurance premiums and pension contributions up to certain maxima.

Personal allowances are SF2,400 for a single person, SF4,800 for a married couple, SF1,450 for each child under 16 years of age (and within certain limits for children over 16 undergoing full-time education), and SF850 for dependent relatives.

### **Foreigners Not in Employment**

Special tax status can be arranged by foreign individuals resident in Liechtenstein but not employed there. Tax may be charged for example on

# Taxation in Liechtenstein

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15% of the individual's taxable expenses or on five times the rental value of his house or apartment in Liechtenstein. The special status excludes taxation on real estate in Liechtenstein, which would be taxed in the normal manner.

The rate of tax levied on this 'notional' income is 15%. This is not subject to any abatement for personal deductions or allowances, but on the other hand no national or communal surcharges are applied.

This special tax status may be granted for quite long periods.

## Local Tax

Local tax is levied on individuals by the 11 communal authorities by way of surcharges on the personal property tax and the personal income tax. It is not levied on corporations. The surcharges, which may not exceed 250%, are set annually by each commune and are generally levied at 200%.

## Property Tax

Individuals owning real estate located in Liechtenstein and securities such as shares and bonds are not subject to income tax on income from these assets such as rents, dividends, and interest, but instead are liable to property tax (*Vermögenssteuer*). Property tax is levied on the officially assessed taxable value of real estate or on the market value of securities. The basic property tax rate of 0.1% is adjusted by an annual multiple (at present 70%) as already explained. However, if the basic tax thus calculated exceeds SF204, a surcharge is imposed that may range from 5% to 325% of the normal rates. In addition to this national tax the commune in which the property is situated imposes a local surcharge, fixed annually, of at most 250%.

## Capital Gains

Individuals are liable to real estate profits tax on any capital gain arising on the disposal of real estate and to income tax on any capital gain arising on the disposal of securities.

## Collection, Assessments, and Appeals

Annual tax returns must be filed by mid-April each year. A tax assessment is then issued, and the tax due shown thereon is payable within 30 days. Estimated assessment and appeal procedures are similar to those for corporations.

## **OTHER TAXES**

### **Sales Tax**

Sales or turnover tax is collected and administered by the Swiss authorities on behalf of Liechtenstein, and the rules are the same as those for the Swiss sales tax described in Chapter 8.

### **Estate, Inheritance, and Gift Taxes**

Estate and inheritance taxes are levied on the death of any individual domiciled and resident in Liechtenstein, although assets located in other countries are exempt. Estate taxes are low, ranging from 1% on the first SF200,000 to 5% on the excess over SF2,000,000. Where the estate is transferred to a spouse, parents, or children, tax is levied at one-half the normal rates.

Inheritance tax rates, which vary depending on the donor's relationship to the beneficiary, are of greater significance, ranging from 0.5% on gifts to very close relatives, through 12% on gifts to distant relatives, to 18% on gifts to unrelated persons. In addition, certain minor surcharges on these rates are added.

Subject only to a once-and-for-all flat rate exemption, gifts are subject to tax at the same rates as inheritances.

### **Stamp Duty on Formation**

Stamp duty is payable on the formation or capital increase of a Liechtenstein legal entity or on the transfer of a foreign corporation's registered address to Liechtenstein. In certain cases 'capital' includes reserves, as for example when the market value of real estate contributed on formation exceeds the nominal amount of capital issued in exchange. This duty amounts to 2% of capital for a legal entity with capital less than SF5 million, 1½% if the capital is SF5 million but less than SF10 million, and 1% if the capital is SF10 million or more.

In unusual circumstances a reduced rate of 0.2%, subject to a minimum of SF200, is levied on certain foundations.

Confirmation of filing of the incorporation documents will not be issued until proof is presented that the formation stamp duty has been paid.

### **Other Stamp Taxes and Duties**

Other minor taxes payable include a tax on sales of securities, at 0.05% (payable by each party to the transaction) on Liechtenstein and Swiss

# Taxation in Liechtenstein

securities and at 0.1% (payable by each party) on foreign securities. This tax is also levied on bills of exchange and similar documents.

## **Application of Swiss Duties and Taxes**

Because of the customs union between the two countries, Swiss customs duties (*Zölle*) are levied in Liechtenstein by Swiss customs authorities. Application of Swiss sales tax to Liechtenstein has already been mentioned.

## **LIECHTENSTEIN AS A TAX HAVEN**

### **Advantages**

The attraction of Liechtenstein to international investors lies in its extremely low rates of tax. Even the low rate normally payable on income is not charged on the activities of holding or domiciliary companies outside Liechtenstein. Because the only tax on such companies is the small corporate capital tax (and in certain cases the coupon tax), Liechtenstein is a favourite tax haven for Continental and other investors. Its advantages over other tax havens such as Bermuda, the Bahamas, and the New Hebrides are that, relatively, its communications are better, its government is extremely stable, its commercial law is favourable, and its banking secrecy law is in keeping with that of Switzerland.

### **Disadvantages**

The principal disadvantage of Liechtenstein as a tax haven is its very name. The fiscal authorities of most European countries and American states regard Liechtenstein as the supreme example of a tax haven. Thus, any transaction with a Liechtenstein-based entity is immediately suspect, and investors are sometimes reluctant to use the country as a tax haven for this reason. Another disadvantage as compared with, say, the Netherlands is that Liechtenstein has no double taxation agreements (apart from one with Austria), and thus dividend and interest flows are liable to withholding taxes from most developed countries. A Liechtenstein corporation is thus similar to a Luxembourg holding company.

### **Double Taxation Agreements**

Liechtenstein has no double taxation agreements with other countries apart from Austria, and Article 26 of the Austrian agreement expressly excludes its application to Liechtenstein's nontaxed entities to the extent that they are owned by or held for the beneficial interest of nonresidents of Liechtenstein. As the country has no double taxation agreement with Switzerland, the Swiss authorities deduct the full 35% Swiss anticipatory tax on any dividends and interest passing from Switzerland to Liechtenstein resident recipients.

# Notes

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